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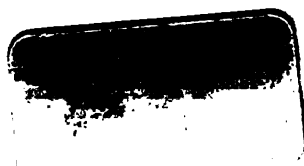
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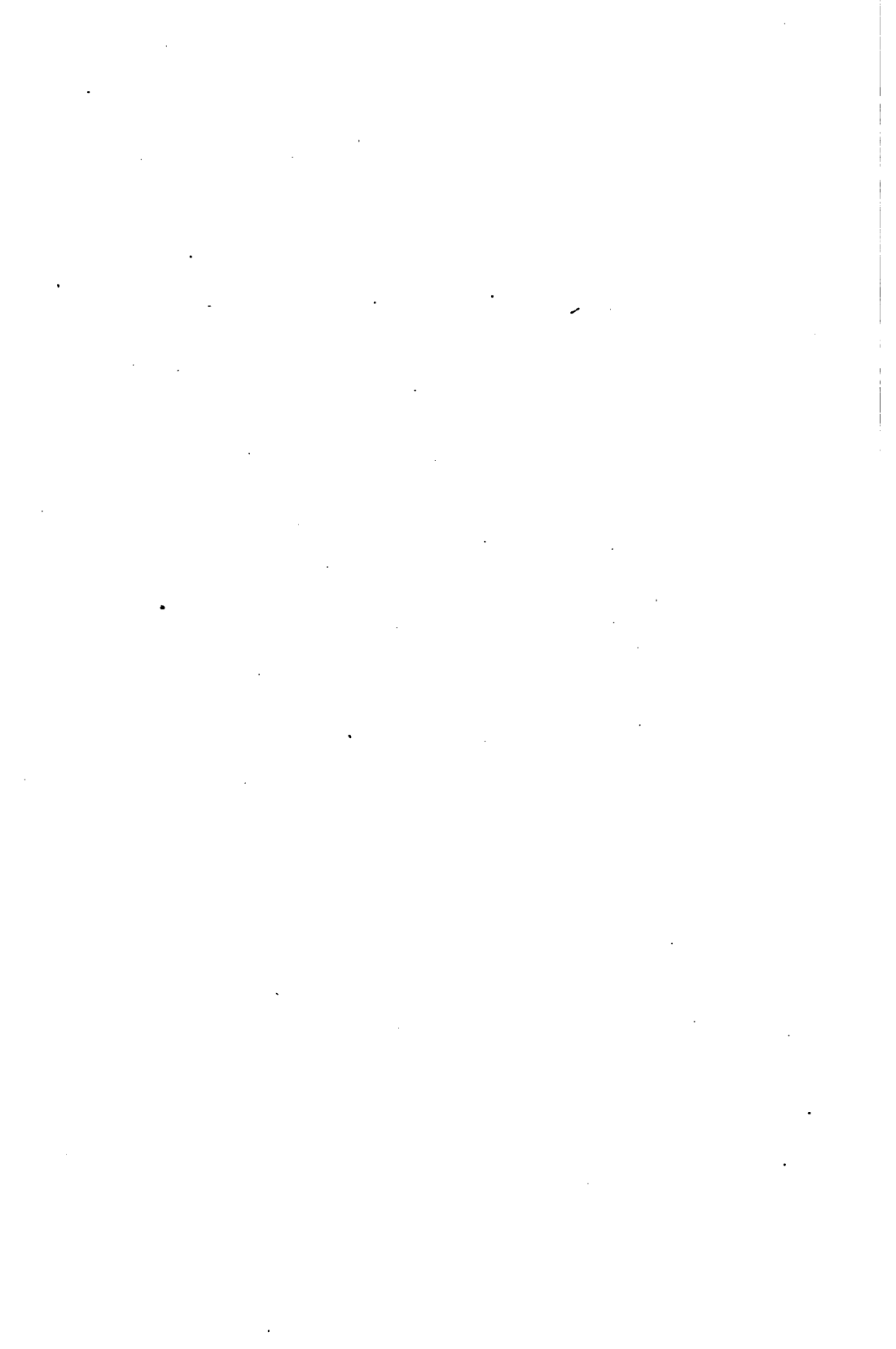
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Ben. incantation







*Herb Powell*

THE  
JOURNAL OF THE  
ROYAL ANTHROPOLOGICAL INSTITUTE  
AND  
THE  
JOURNAL OF ETHNOLOGICAL SOCIETY  
THIRTY-NINTH VOLUME  
PART I  
GEORGLA BARCLAY CLARKE  
F.R.S.  
TYPE: PLANTING  
JUNE 1, 1909

LONDON:  
HARRIS, STODOLSKY &  
MAISON, 1909.





**REPORT**  
**OF THE**  
**THIRTY-NINTH ANNUAL SESSION**  
**OF THE**  
**GEORGIA BAR ASSOCIATION**  
**HELD AT**  
**TYBEE ISLAND, GEORGIA**  
**JUNE 1, 2, 3, 1922**

---

**EDITED BY**  
**HARRY S. STROZIER, SECRETARY**  
**MACON, GEORGIA**

MACON, GEORGIA  
THE J. W. BURKE COMPANY  
1922

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## THOSE WHO ATTENDED

Adams, A. Pratt, Savannah	Cowart, J. M., Arlington
Adams, Mrs. A. Pratt, Savannah	Cox, R. L., Monroe
Adams, J. S., Dublin	Cunningham, T. M., Jr., Savannah
Adams, Samuel B., Savannah	Curry, W. Inman, Augusta
Abrahams, Edmund H., Savannah	Daniel, J. Saxton, Claxton
Akerman, Charles, Macon	Davis, James C., Washington, D. C.
Alexander, Columbus E., Savannah	Davis, T. Hoyt, Vienna
Alston, Robert C., Atlanta	Denmark, Remer L., Savannah
Anderson, A. S., Millen	Dillon, Walter S., Atlanta
Anderson, J. Randolph, Savannah	Dobbs, E. O., Barnesville
Atkinson, David S., Savannah	Dobbs, E. O., Jr., Barnesville
Barrett, George B., Augusta	Donnelly, Charles E., Savannah
Barrett, Wm. H., Augusta	Douglas, Hamilton, Jr., Atlanta
Beck, M. W., Atlanta	Douglas, W. W., Savannah
Bell, Geo. L., Jr., Atlanta	Dukes, Humphrey G., Savannah
Bell, R. C., Cairo	Dukes, J. P., Pembroke
Bennet, Sam S., Albany	Edwards, Chas. G., Savannah
Bennet, Mrs. Sam S., Albany	Edwards, Mrs. Charles G., Savannah
Bennett, John W., Waycross	Edwards, Charles Beach, Savannah
Bernstein, Morris H., Savannah	Ellis, Roland, Macon
Blalock, J. D., Waycross	Evans, A. W., Sandersville
Bleckley, Logan, Atlanta	Falligant, Raiford, Savannah
Bouhan, John J., Savannah	Fawcett, J. R., Savannah
Bradley, A. S., Swainsboro	Fleming, William H., Augusta
Bradley, Miss Katharine, Swainsboro	Fogarty, D. G., Augusta
Bradley, Miss Marjorie, Swainsboro	Fortson, B. W., Arlington
Bradley, Miss Virginia, Swainsboro	Franklin, A. L., Augusta
Branch, Harlee, Atlanta	Franklin, Mrs. A. L., Augusta
Brennan, Edward C., Savannah	Franklin, O. J., Eastman
Brannen, J. A., Statesboro	Fuller, William A., Atlanta
Broyles, Nash R., Atlanta	Ganahl, Jos., Augusta
Broyles, Mrs. Nash R., Atlanta	Gardner, B. C., Camilla
Bruce, Dan R., Valdosta	Gardner, Mrs. B. C., Camilla
Burgess, Willard W., Gray	Garlington, Sam F., Augusta
Bussey, A. S., Cordele	Gibbs, W. B., Jesup
Byrd, Dan M., Lawrenceville,	Gordon, William W., Savannah
Candler, Asa W., Atlanta	Grice, Warren, Macon
Cann, J. Ferris, Savannah	Grogan, George C., Elberton
Carlisle, J. D., Macon	Gross, M. L., Sandersville
Cobb, H. P., Savannah	Guerry, John B., Montezuma
Cohen, Edwin A., Savannah	Guerry, Mrs. John B., Montezuma
Colding, Robert L., Savannah	Guyton, Clarence T., Guyton
Colquitt, Walter T., Atlanta	Hammond, T. A., Atlanta
Collins, E. C., Reidsville	Hardeman, R. N., Jr., Louisville
Connerat, Spencer, Savannah	Harris, George A. H., Jr., Rome
Cooper, John R., Macon	Harris, Roy V., Louisville
Corey, E. A., Savannah	Harrison, Z. D., Atlanta

## THOSE WHO ATTENDED

Cozart, A. W., Columbus  
 Crawley, Jerome, Waycross  
 Crusselle, Edward, Atlanta  
 Cubbedge, B. B., Jr., Savannah  
 Harrison, Mrs. Z. D., Atlanta  
 Henley, J. W., Atlanta  
 Herzog, Alva L., Savannah  
 Hill, B. H., Atlanta  
 Hill, Mrs. B. H., Atlanta  
 Hines, J. K., Atlanta  
 Hines, Mrs. J. K., Atlanta  
 Hitch, Robert M., Savannah  
 Hofmayer, I. J., Albany  
 Hodges, W. C., Hinesville  
 Holden, Frank A., Athens  
 Howard, Henry G., Augusta  
 Howard, Wm. M., Augusta  
 Howard, Mrs. Wm. M., Augusta  
 Howell, Hugh, Atlanta  
 Hull, James M., Jr., Augusta  
 Hutchine, N. L., Lawrenceville  
 Isaac, Clarence R., Brunswick  
 Isaac, Miss Lillian, Brunswick  
 Isaac, Miss Marie, Brunswick  
 Isaac, Max, Savannah  
 Isaac, Mrs. Max, Brunswick  
 Jackson, B. P., Vidalia  
 Johnson, Gilbert E., Savannah  
 Johnson, H. Wiley, Savannah  
 Jordan, R. C., Macon  
 Kelley, Jas. F., Rome  
 Kenan, Livingston, Savannah  
 Kimball, R. H., Winder  
 Kimball, Mrs. R. H., Winder  
 King, Alex. C., Atlanta  
 Langley, Lee J., Rome  
 Langley, Mrs. Lee J., Rome  
 Lankford, G. W., Lyons  
 Lawrence, A. A., Savannah  
 Lawson, Hal, Abbeville  
 Lawson, H. F., Hawkinsville  
 Lawton, A. R., Savannah  
 LeCraw, J. W., Atlanta  
 Lee, Lansing B., Augusta  
 Lee, Mrs. Lansing B., Augusta  
 Lewis, Miles W., Greensboro  
 Love, W. G., Columbus  
 Lovett, A. B., Savannah  
 Luke, Roscoe, Thomasville  
 MacDonnell, A. H., Savannah  
 Maddox, Billie, Rome  
 Maddox, G. E., Rome  
 Maddox, John W., Rome  
 Maddox, John W., II, Rome  
 Mathews, H. A., Ft. Valley  
 McCreary, John J., Macon  
 Meader, R. D., Brunswick  
 Meadow, W. K., Athens  
 Miller, Wallace, Macon  
 Mills, Lewis A., Jr., Savannah  
 Moore, Louis S., Thomasville  
 Moore, R. Lee, Statesboro  
 Moore, Virlyn B., Atlanta  
 Morrissey, Leo A., Savannah  
 Munro, Geo. P., Columbus  
 Murray, Jno. J., Valdosta  
 Napier, Geo. M., Atlanta  
 Neely, Edgar A., Atlanta  
 Neely, Mrs. Edgar A., Atlanta  
 Neill, W. Cecil, Columbus  
 Oakes, I. L., Lawrenceville  
 Oakes, Mrs. I. L., Lawrenceville  
 O'Donnell, George, Savannah  
 Oliver, Edgar J., Savannah  
 Oliver, F. M., Savannah  
 Owens, George W., Savannah  
 Parker, D. M., Waycross  
 Park, Miss Elizabeth, Greensboro  
 Park, Noel P., Greensboro  
 Park, Mrs. Noel P., Greensboro  
 Park, Orville, A., Macon  
 Parks, Warren B., Dawson  
 Patillo, D. C., Vidalia  
 Pedrick, Larry E., Waycross  
 Phillips, Miss Frances, Louisville  
 Phillips, John R., Louisville  
 Phillips, W. L., Louisville  
 Powell, A. G., Atlanta  
 Powell, Mrs. A. G., Atlanta  
 Powell, Miss Frances, Atlanta  
 Powell, Miss Grace, Atlanta  
 Pope, John D., Albany  
 Pope, Mrs. John D., Albany  
 Porter, Mrs. J. H., Atlanta  
 Porter, J. H., Atlanta  
 Powell, Mrs. A. G., Atlanta  
 Powell, Miss Frances, Atlanta  
 Powell, Miss Grace, Atlanta  
 Pottle, Jos. E., Milledgeville  
 Pottle, Mrs. Jos. E., Milledgeville  
 Pottle, J. R., Albany  
 Pottle, Miss Virginia, Albany  
 Perryman, C. J., Lincolnton  
 Price, R. G., Louisville  
 Purvis, Arthur L., Savannah  
 Randolph, Hollins N., Atlanta

Ravenel, Thomas P., Savannah  
Rawls, H. G., Donalsonville  
Redding, Chas. L., Waycross  
Redfearn, D. H., Albany  
Redfearn, Mrs. D. H., Albany  
Reese, Millard, Brunswick  
Rich, P. D., Colquitt  
Rogers, H. L., Ocilla  
Rogers, Z. B., Elberton  
Rosser, Luther Z., Atlanta  
Rountree, I. W., Swainsboro  
Rourke, Jno. Jr., Savannah  
Rowe, A. B., Savannah  
Russell, Chas. D., Savannah  
Russell, Richard B., Atlanta  
Ryan, Miss Helen P., Savannah  
Ryan, John Z., Savannah  
Ryan, Mrs. John Z., Savannah  
Sanderson, William R., Savannah  
Saussy, Fred T., Savannah  
Saussy, Gordon, Savannah  
Shelton, Charles B., Atlanta  
Sheppard, Walter W., Claxton  
Shumate, F. E., Atlanta  
Sibley, Samuel H., Marietta  
Sims, Walter A., Atlanta  
Smith, Alex. W., Jr., Atlanta  
Smith, Mrs. Alex. W., Jr., Atlanta  
Smith, E. L., Edison  
Smith, Mrs. E. L., Edison  
Smith, Jno. Y., Atlanta  
Smith, Marion, Atlanta  
Smith, Seward M., Atlanta

Spalding, Hughes, Atlanta  
Spalding, Hughes, Jr., Atlanta  
Spalding, Jack J., III, Atlanta  
Stephens, Alexander W., Atlanta  
Stewart, John P., Atlanta  
Stovall, W. B., Atlanta  
Strozier, Harry S., Macon  
Sutlive, John, Savannah  
Swift, H. H., Columbus  
Taylor, Eugene S., Summerville  
Taylor, Mrs. Eugene S., Summerville.  
Thomas, John M., Savannah  
Tipton, J. H., Sylvester  
Turner, William D., Savannah  
Turner, Mrs. William D., Savannah  
Walker, Clifford, Monroe  
Walsh, Thomas F., Jr., Savannah  
Walsh, Mrs. Thomas F. Jr., Savannah  
Warnell, W. G., Savannah  
Webster, J. Prince, Atlanta  
Webster, Mrs. J. Prince, Atlanta  
Weldon, Miss Marjorie, Atlanta  
Wells, J. T., Jr., Savannah  
Westbrook, Cruger, Albany  
Wheeler, A. C., Gainesville  
White, H. S., Sylvania  
Wilcox, E. K., Valdosta  
Wilkinson, H. A., Dawson  
Wood, Jno. S., Canton  
Wood, Mrs. Jno. S., Canton  
Wright, Barry, Rome  
Yeomans, M. J., Dawson  
Youngblood, F. R., Savannah





**REPORT OF PROCEEDINGS  
OF THE THIRTY-NINTH ANNUAL SESSION OF  
THE GEORGIA BAR ASSOCIATION, HELD  
AT HOTEL TYBEE, TYBEE ISLAND,  
GEORGIA, JUNE 1, 2, 3, 1922**

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**MORNING SESSION, JUNE 1, 1922.**

The Thirty-Ninth Annual Session of the Georgia Bar Association convened in the pavilion of Hotel Tybee, Tybee Island, Georgia, at 12:00 o'clock, noon, Eastern time. The meeting was called to order by the President, Judge Arthur G. Powell, of Atlanta.

The President: The Thirty-Ninth Annual Session of the Georgia Bar Association will now be in order. I will ask those who are in the rear of the building to come forward and be seated.

We are all very much gratified at the large attendance at this meeting of the Association. Probably on account of the inclement weather of yesterday some have been kept away from this meeting; still we have a very good attendance at which we are very much gratified.

The first order of business on the program is the report of the Executive Committee. General Walter A. Harris, of Macon, the chairman of this Committee, is unavoidably prevented from being present this morning. Mr. Strozier, our Secretary, acting as vice-chairman of the Committee, will make the report.

The Secretary: I am disappointed that General Harris, the chairman of the Executive Committee, can not be here.

He asked me to say that he very much regretted that he could not be here to discharge his duties.

The first thing which is usually reported by the Executive Committee is the elections to membership. I will read the names of the applicants who have been elected, their places of residence, and the members of the Association by whom they have been endorsed.

<i>Applicant</i>	<i>Residence</i>	<i>Endorsed by</i>
Bond Almand.....	Atlanta.....	Wm. Schley Howard
W. W. Armistead.....	Crawford.....	Walter S. Dillon
William Butt.....	Blue Ridge.....	A. G. Powell
C. Murphey Candler.....	Atlanta.....	J. Prince Webster
Dan Chappell.....	Americus.....	W. W. Dykes
A. Y. Clement.....	Monticello.....	Walter S. Dillon
H. C. Cox.....	Monroe.....	N. L. Hutchins
R. L. Cox.....	Monroe.....	N. L. Hutchins
T. Elton Drake.....	Winder.....	R. H. Kimball
P. B. Ford.....	Sylvester.....	J. H. Tipton
J. O. Gibson.....	Moultrie.....	D. H. Redfearn
Grady Gillon.....	Macon.....	Harry S. Strozier
R. L. Greer.....	Oglethorpe.....	Walter S. Dillon
M. L. Gross.....	Sandersville.....	Walter S. Dillon
Jos. B. Hand.....	Brunswick.....	Max Isaac
John Clifford Hale.....	Bainbridge.....	J. R. Pottle
J. L. Hargrove.....	Atlanta.....	Grover Middlebrooks
J. J. Hill.....	Pelham.....	J. R. Pottle
J. B. Lanier.....	Albany.....	J. R. Pottle
K. P. Lowe.....	Knoxville.....	R. C. Jordan
J. U. Merritt.....	Thomasville.....	Walter S. Dillon
J. A. Mitchell.....	Crawfordville.....	Geo. M. Napier
J. C. Patillo.....	Vidalia.....	Walter S. Dillon
T. R. Perry.....	Sylvester.....	J. R. Pottle
C. J. Perryman.....	Lincolnton.....	Walter S. Dillon
J. W. Rountree.....	Swainsboro.....	A. S. Bradley
R. E. L. Spence, Jr.....	Macon.....	Harry S. Strozier
James Tipton.....	Atlanta.....	F. V. Chalmers
C. L. Shepard.....	Fort Valley.....	Harry S. Strozier
John R. Slater.....	Valdosta.....	J. B. Copeland
Seward M. Smith.....	Atlanta.....	Geo. M. Napier
B. Cubbedge Snow.....	Macon.....	Harry S. Strozier
John P. Stewart.....	Atlanta.....	Asa W. Candler
Lawton H. Ware.....	Hawkinsville.....	H. F. Lawson
Isaac M. Wengrow.....	Brunswick.....	Clarence P. Isaac
J. S. Weathers.....	Cairo.....	Harry S. Strozier
Max H. Wilensky.....	Atlanta.....	Hamilton Douglas
Marvin Underwood.....	Atlanta.....	Z. D. Harrison
Gilbert E. Johnson.....	Savannah.....	C. E. Alexander
Saron F. Tarlington.....	Augusta.....	Jos. Ganahl
Hugh Howell.....	Atlanta.....	J. W. LeCraw
T. Hoyt Davis.....	Vienna.....	Seward M. Smith

The Secretary, continuing: Since the convening of the Association, we have received the following additional applications:

<i>Applicant</i>	<i>Residence</i>	<i>Endorsed by</i>
T. S. Winn.....	Pearson .....	Walter S. Dillon
C. E. Crow.....	Camilla.....	J. R. Pottle
Geo. A. Mercer.....	Savannah.....	M. H. Bernstein
Jos. A. Cronk.....	Savannah.....	Samuel B. Adams
Ellery Stone.....	Savannah.....	M. H. Bernstein

The President: The Association being in session, it will be necessary for the last named applicants for membership to be elected by the Association.

Mr. R. C. Alston, of Atlanta: I move that the rules be suspended and that the Secretary be instructed to cast the ballot of the Association in favor of these gentlemen whose applications were last read.

This motion was seconded and carried.

The Secretary: I hereby cast the ballot of the Association for the election of these gentlemen to membership.

The President: And they are declared elected.

The Secretary, continuing: I will now announce the program for today in so far as we have arranged it at this time. Immediately after the report of the Executive Committee there will be the report of the Treasurer. As soon as that is completed, the meeting will be thrown open for the introduction of resolutions. After that, we will have the report of the Permanent Commission on Revision of the Judicial System and Procedure in the Courts and the report of the Committee on Legal Ethics and Grievances, after which the President's address will be delivered by Judge Powell.

This afternoon we are going to hold a session of only one hour. We are going to meet in this place promptly at 3:00 o'clock this afternoon, and adjourn at 4:30 o'clock, Eastern time. The reason for that is, that the solicitors-general and other prosecuting officers of the State are holding a convention in conjunction with our meeting. They want to meet this afternoon, and we are going to adjourn at

4:00 o'clock, in order to let them have their meeting in this pavilion.

Tonight there will be an entertainment consisting of music and solo dancing, which has been provided for the entertainment of the Association by the Savannah Bar Association. This will be in the pavilion, I presume at 8:00 o'clock.

This afternoon we will have the reports of some of the Committees, and in addition to that we will have the papers by Mr. H. F. Lawson, of Hawkinsville, and Mr. George S. Jones, of Macon, on the subject, "Business Methods in a Lawyer's Office."

It is impossible to announce the balance of the program at this time, but I would like to say that tomorrow night at 8:30 o'clock in the pavilion there will be a musical entertainment by St. John's choir and the Bethesda boys. We enjoyed their entertainment very much last year. Other announcements of the program will be made as we are able to complete the arrangements for the same.

Mr. M. J. Yeomans, of Dawson: I move that a Committee on Resolutions be appointed, consisting of three, to whom all resolutions shall be referred without debate.

The motion was seconded.

The President: There have been two precedents in regard to this, either of which might be safely followed. I think Mr. Rosser, as President, appointed a Committee on Resolutions, and it was done another time. The present Executive Committee would also prefer to have a separate committee.

The motion was put to a vote and carried.

The President: I will appoint on that Committee

Mr. M. J. Yeomans, of Dawson;

Mr. W. M. Howard, of Augusta;

Mr. R. C. Jordan, of Macon.

I want to explain in regard to the program this afternoon that the Attorney General of the United States has requested the law enforcement officers of the State to meet

with those of the United States. We are glad to have them here. We suggested to them, if they had any real law enforcement officers with them, to get them away from here as quickly as possible. (Laughter.) There is a certain very distinguished member of the bar sitting within my eyesight, who was recently approached with a request that he contribute ten dollars to help bury a prohibition officer. He said, "Gladly; take a hundred dollars, and bury ten of them, and I will be better satisfied." (Laughter.) It is not necessary to tell who that was. They all know.

The delegates present at this meeting of the Association are very grateful to the Savannah Bar for their interest in the welfare and comfort of those present. They have appointed a Committee, of which Mr. W. W. Gordon, of Savannah, is Chairman, and consisting of several other members of the Savannah Bar, for the purpose of entertaining this body. They are actively at work and of course the matter on the program for this evening is one of the direct results of their efforts. I will not say anything about what else they have told me about their intentions towards entertaining us. That will doubtless be revealed to you after you have given the password and the grip. (Laughter.)

The next thing on the program is the report of our beloved Treasurer, Mr. Z. D. Harrison, of Atlanta. (Applause.)

For Treasurer's Report, see page 261.

The President: I say no new thing when I say that our Treasurer is perhaps the best beloved of all of the young members of this Association.

If you will look through the proceedings of the Association, you will find in one of the volumes a statement by Mr. Harrison of himself, in which he says "I have no sense of humor." The paper he has just read to this Association shows that he did not know himself at all.

If Mr. Harrison persists in refusing to further serve in the office he has graced for these many years, it will be necessary, of course, for the Association to release him,

but never so long as he lives are we going to release him from membership in the Association or from the love of every man in the Association. (Applause.)

I wish to supplement the report of the Executive Committee by stating that on tomorrow's program the piece de resistance will be the address by Mr. James C. Davis, Director-General of Railroads under the United States Railroad Administration. I don't know what time he will arrive here. His address will be about the noon hour. However, in order that he may be met and his movements taken care of to some extent, I am going to ask Col. A. R. Lawton, Sr., of Savannah, and Mr. W. H. Barrett, of Augusta, to serve with Mr. Alex W. Smith, Jr., of Atlanta, of the Executive Committee, to see that he is brought to the hotel and made to feel at home; in other words, to look after him.

I have a personal request to make of members of the Association, namely: that if there be any member of the Association—and I trust there may be—who would like to go to the American Bar Association meeting in San Francisco this summer as a delegate, he let me know between now and tomorrow morning.

Mr. L. Z. Rosser, of Atlanta: Are you going to pay the way of that delegate?

The President: The Association will not pay his way.

Mr. Rosser: Nobody wants to go then. It's too far.

The President: Next on the Program is the offering of resolutions. I will state that the Executive Committee will give opportunity for the offering of resolutions at other times during the meeting.

Next in order is the report of the Committee on Legal Ethics and Grievances, of which Mr. W. H. Barrett, of Augusta, is Chairman.

Mr. W. H. Barrett, of Augusta: Inasmuch as the report does not cover any matters of any considerable importance, and in order that we may go on with our program, I move that the report be accepted and published in the proceedings.

Mr. L. Z. Rosser, of Atlanta: I second the motion.

The President: I hear no objection, and it will take that direction.

(For the report of the Committee on Legal Ethics and Grievances, see page 258.)

The President: Next is the report of the Permanent Commission on Revision of the Judicial System and Procedure in the Courts, Judge Andrew J. Cobb, Chairman. He is not present.

The Secretary: Judge Cobb wrote me that he could not be here. He sent his report and asked me to present it to the Association. It is very short. Judge Cobb suggested in the letter that the question of the continuance of the Commission be referred to the incoming Executive Committee, and he asked me to present that to the Association.

Judge A. W. Cozart, of Columbus: I move that the question of retaining the Commission be referred as requested to the Executive Committee.

This motion was seconded and carried.

(For the report of the Permanent Commission on Revision of the Judicial System and Procedure in the Courts, see page 265.)

The President: Under the By-Laws the President is charged with the duty of appointing a Nominating Committee on the first day of the session. I am somewhat embarrassed in the performance of this duty by reason of the manner of my own election as President of this body. It was suggested that I was recommended for the Presidency as the representative of the country element by the Nominating Committee, and by the "rough-necks" by one who posed as the leader of the "rough-necks." I have also felt some affiliation with what might be called the "kid-glove" element. Desiring to be perfectly fair to all elements, I felt that I might by looking among the members of the Association find five men who would serve on this Committee and who would be a compromise between the "kid-gloves" and the "rough-necks." Looking over the mem-



bers, my mind turned first to my life-long friend Mr. S. S. Bennet, of Albany, whom I will name as Chairman. The other members are: Mr. Warren Grice, of Macon; Mr. A. L. Franklin, of Augusta, leader of the "rough-necks"; Mr. L. Z. Rosser, of Atlanta, who goes on as a representative of the "kid-glove" element, and Mr. W. Cecil Neill, of Columbus, who is a happy combination of the two.

Next in order, gentlemen, is the President's address.

(For the President's address, see page 167.)

The President: In a moment the meeting will stand adjourned until 3:00 o'clock this afternoon.

An announcement I wish to make is that an officer of the Central Railroad will be in the hotel lobby tomorrow for the purpose of making reservations for those who wish to return by the Central Railroad.

The Secretary wishes to request all members to register at the desk in the hotel lobby. Not only does he wish the members to register but also the ladies who accompany them. Please register at the desk inside the door in the hotel lobby.

The meeting will now stand adjourned until 3:00 o'clock, Savannah time.

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#### AFTERNOON SESSION, JUNE 1, 1922.

The afternoon session was called to order at 3:00 o'clock by the President, Judge Arthur G. Powell, of Atlanta.

The President: Let the Association come to order, gentlemen.

Mr. W. W. Gordon, of Savannah: Mr. President, before we start our regular exercises this afternoon, I would like to draw the attention of the Association to our feeling that when it comes to Tybee the Association comes to absolutely the best resort in Georgia. Over that resort we have a presiding officer, lately elected, who is now with us, and who wants to give you a welcome to Tybee. I have the pleasure of introducing to the Association Mr. George Butler, Mayor of Tybee.

Mr. George Butler, of Tybee: Gentlemen of the Bar Association: I am ordinarily a man of few words, but I want to assure you that our little town is just tickled to death to have the State Bar Association with us. I was very much pleased to learn awhile ago something that I did not know before, that is, that Tybee is your permanent convention place. We are, of course, small. As you see, we have started out by getting some young fellows to run the small place and we hope to make the place grow with us. We feel sure that the conventions of the Bar Association are going to help us do that. It is quite an honor to have you with us and a particular pleasure that you will be with us every year. If there is anything in the world the town or its officials can do to make your stay pleasant, call on us. Mr. Cann, a member of your Association, is one of our aldermen, and he is ready and willing to offer any assistance at any time during the Convention, and I will ask you not to hesitate to call on us.

In order that I may not take up too much time, I will merely say that we are more than glad to have you, and with the completion of our new road, we trust you will be able to come to see us in your automobiles not only once a year but at numerous times during the summer. We are mighty glad to have you. (Applause.)

The President: On behalf of the Association, I want to say we appreciate your words of welcome, Mr. Mayor, and I hope you will give proper instructions to your Chief of Police, in order that there may be no danger of mistaking any of the members of this Association for prohibition officers. I understand they can arrest any prohibition officer on the Island. (Laughter.)

Mr. Butler: I did not think it was necessary to call that to your attention, Mr. President, but I have already done so. (Applause.)

The President: I will ask Judge J. R. Pottle, of Albany, a vice-president of the Association, to preside during the afternoon session.

Judge Pottle took the Chair.

Judge J. R. Pottle, presiding: I am sure we will all agree that the President has earned a little rest on account of giving us that magnificent address he delivered to us this morning. I take pleasure in relieving him for the afternoon session.

The Secretary: I have two additional applications for membership presented since the morning session. They are

<i>Applicant</i>	<i>Residence</i>	<i>Endorsed by</i>
John J. Murray.....	Valdosta.....	J. H. Tipton
Dan R. Bruce.....	Valdosta.....	J. H. Tipton

Mr. Asa W. Candler, of Atlanta: I move that the rules be suspended and that the Secretary be instructed to cast the ballot of the Association for these applicants.

This motion was seconded and carried, and the applicants were declared elected after the Secretary had cast the ballot as directed.

Judge J. R. Pottle, presiding: Next in order is a report from the Executive Committee in reference to the program for the remainder of the session.

The Secretary: Mr. President, this afternoon, as I announced this morning, we are going to have only a short session on account of the solicitors general. We are going to have this afternoon read by Mr. W. K. Meadow, of Athens, a "Biographical Sketch of Jack Jones," prepared by Mr. Sylvanus Morris, Dean of the Law School of the University of Georgia. Professor Morris was unable to come in person to present this paper. Also, if we have the time for it, we want to have this afternoon Mr. H. F. Lawson's paper, "Business Methods in a Lawyer's Office." The Executive Committee thought it timely and appropriate to have papers on that subject. It is a question that is being talked about a good deal by Bar Associations all over the country, and the Executive Committee selected Mr. H. F. Lawson, of Hawkinsville, and Mr. George S. Jones, of Macon, to write papers on that subject. We won't have time for both of those papers this afternoon, but I hope

we will have the time to hear the paper by Mr. Lawson this afternoon, and that by Mr. Jones perhaps will be heard tomorrow morning.

Don't forget the entertainment this evening at 8:30 o'clock. Music has been provided by the members of the Savannah Bar Association, and after that entertainment there will be dancing in the pavilion.

The Executive Committee has not yet arranged the program for tomorrow, but we will have one of the addresses by the judges who are on the program and at some time tomorrow we will have the annual address. We will meet tomorrow, I presume, at half past ten o'clock, Eastern time. At that time, the detailed program will be announced for the remainder of the meeting.

Judge J. R. Pottle, presiding: The Association will be pleased now to hear from Mr. W. K. Meadow, representing Professor Sylvanus Morris, if he will come forward.

Mr. W. K. Meadow, of Athens: Mr. President, Ladies and Gentlemen: During the two years that I had the pleasure of studying law under Doctor Morris, it never occurred to me that I would ever be called upon to act in his place. I am sure we all regret his not being able to be here to present his paper in person. In his absence I will read the "Biographical Sketch of Jack Jones" which he has prepared.

(For Mr. Morris' paper, see page 113.)

Judge J. R. Pottle, presiding: We are very much obliged to Mr. Meadow for representing Doctor Morris in reading this excellent paper. I believe a great many of us were introduced to the Honorable Jack Jones a great many years ago, and many of us are glad to know about him.

The next paper on the program is the paper entitled "Business Methods in a Lawyer's Office," by Mr. H. F. Lawson, of Hawkinsville.

(For Mr. Lawson's paper, see page 116.)

Judge J. R. Pottle, presiding: I am sure the Association has enjoyed this most excellent paper by our Brother Lawson.

The Secretary has informed me that the time for adjournment has arrived, under the agreement that this pavilion is to be turned over to the solicitors general.

Mr. George M. Napier, of Atlanta: I want to say, Mr. President, that everybody is invited to remain for this meeting. We would be glad to have you with us.

Judge J. R. Pottle, presiding: We are very much obliged to you, Mr. Attorney-General.

The afternoon session was then adjourned.

### MORNING SESSION, JUNE 2, 1922.

The morning session of the second day was called to order at 10:30 o' clock by the President, Judge Arthur G. Powell, of Atlanta.

The President: The Association will be in order. The Secretary has something to present at this time.

The Secretary: We have the following additional applications for membership which I desire to present to the Association at this time for action:

<i>Applicant</i>	<i>Residence</i>	<i>Endorsed by</i>
Guy Alford.....	Swainsboro.....	A. S. Bradley
H. L. Rogers.....	Ocilla.....	Harry S. Strozier
J. Saxton Daniel .....	Claxton.....	Livingston Kenan
V. B. Moore.....	Atlanta .....	Harry S. Strozier
Eugene Pollard.....	Savannah.....	R. M. Hitch
W. R. McDonald.....	Augusta.....	W. Inman Curry
B. B. Cubbedge, Jr.....	Savannah.....	A. B. Rowe

Mr. Warren Grice, of Macon: I move that the rules be suspended and that the Secretary be instructed to cast the ballot of the Association for these gentlemen.

This motion was seconded and carried and the applicants duly elected to membership.

The President: Fifty-six applications have been passed on, which speaks well for the membership Committee, of which Mr. Rollin H. Kimball, of Winder, is Chairman. The other members of the Committee have also worked well with him. When you consider that the bar of the State was raked with a fine-tooth comb for members during the last year or two, this showing is quite an excellent one.

The Chair would like to announce the following appointments:

*Delegates to the American Bar Association:*

Mr. R. C. Alston, Atlanta,  
Mr. Harry S. Strozier, Macon,  
Mr. Rollin H. Kimball, Winder.

*Delegates to the Conference of Bar Association Delegates:*

Mr. T. A. Hammond, Atlanta,  
Mr. Orville A. Park, Macon,  
Mr. R. M. Hitch, Savannah.

*Committee on Legislation:*

Mr. W. B. Parks, Dawson,  
Mr. A. A. Lawrence, Savannah,  
Judge J. R. Pottle, Albany.

The next order of business is the report of the Executive Committee.

The Secretary: The Executive Committee has decided to start the program this morning with the addresses by Judge King and Judge Sibley and Judge Beck and Judge Broyles will follow. We will go so far as we can with that program this morning. Mr. Davis, our guest, who will deliver the Annual Address, has arrived in Savannah, and will be here about 11:00 o'clock. He will come on to the hall as soon as he can after he reaches here. We hope to have the address by Mr. Davis about 12:00 o'clock, or a quarter past.

This afternoon we will go ahead with the program as far as we can, though we will not complete it until tomorrow morning. We have Mr. George S. Jones' paper on

"Business Methods in a Lawyer's Office" and addresses by Mr. A. L. Franklin and Judge Roscoe Luke. We can certainly not reach those before this afternoon. We will have this morning reports of the Committees on Legislation, Federal Legislation and Interstate Law.

I want to remind you of the entertainment we are going to have in the pavilion tonight at 8:00 o'clock. We will have a musical entertainment by the St. John's choir and the Bethesda boys. We had St. John's choir with us last year and they gave us a very fine entertainment. This is the same choir but it has been augmented this year. There are ninety voices and there is a special program provided for this occasion.

The President: I wish to state as a preliminary to the symposium to be conducted under the head of jokes from different sections of the State that any lawyer having a joke, which does not take more than an hour and a half to tell, will be at liberty to tell it tomorrow morning, provided he can tell it in three minutes.

When it comes to this symposium of judges, the Executive Committee was very anxious to have a large attendance at this meeting of the Association, and we knew that a symposium by judges, whom we all love, would result in a good attendance. The result justifies our expectation. The attendance has been large at this session, especially considering the inclement weather that threatened us as we were about to come here. Furthermore, we had in mind that by putting both Federal and State judges on the program together, we could cultivate that spirit of fellowship and good feeling that now exists between the Federal and State Judiciary in Georgia. They do work together in Georgia because they have come from the same bar, and have served in the same courts previously.

My task in presiding over this symposium of judges is rather a delicate one. It will give me, of course; great pleasure to sit here and when one rises to speak and asks, "How much time have I?" to say, as they have said to

me in times past, "Finish as quick as you can." But in this Association my jurisdiction is only temporary, while in their courts theirs is permanent. About a week after this meeting, when I got up in one of their courts, they will remember me.

Our distinguished guest today tells a story in which he draws the distinction between temporary and permanent. Out in Iowa, he says, they were holding a State political convention. A man a little bit inebriated got up and objected to the proceedings on the ground that the convention was not now permanently organized; that only a temporary organization had been perfected. Another member of the body said, "Sit down; you can't tell the difference between temporary and permanent." He replied, "Yes I can; I am drunk; that is temporary. You are a damned fool; that is permanent." (Laughter.)

The rule obtains that the youngest member of the court must speak first in order that he may not be influenced by the views of his superior officers, and thereby a frank expression will be obtained from all those who participate in this symposium. It happens also in this symposium that the youngest in rank and point of age is one who is temperamentally fitted to start off this symposium. I have known him a long time. I have known him well. He is not only a judge; he is a gentleman. (Laughter.) I am going to ask Judge R. C. Bell, of the Albany Circuit, to come forward and start this symposium. (Applause.)

Judge R. C. Bell, of Cairo: Mr. President and Ladies and Gentlemen of the Georgia Bar Association: Some sixty or ninety days ago I had a letter from the President of the Association asking me if I would not participate in a symposium by certain Federal and State Judges. I turned to the stenographer's desk near at hand, and picked up a vest pocket dictionary to see what the word "symposium" meant. I found these two, and only these two, definitions therein: First, "a drinking party;" second, "a banquet for philosophical conversation." Well, I wrote the Presi-



dent of the Association that, if the other judges who had been suggested for this symposium agreed, I would be very glad indeed to make it unanimous. I thought possibly that it would be a banquet. So I was prepared for a number of weeks to come here and participate in a symposium of one or the other of the types mentioned. (Laughter.) I didn't know until quite a while later that I would be expected to say anything or read anything, because I might attend even a banquet and keep silent, but I noticed in the press a little later that an address was expected from each of these judges.

So I thought that I would consult another dictionary, and I turned to Webster's Intercollegiate Dictionary and found this: "A collection of articles by various writers upon some topic of general interest." The topic to be discussed was, "Why is a State Judge." So I am undertaking to qualify under the third definition of the word "symposium."

I intended at one time to make an effort to be funny on this occasion, and in fact I may be, but I am sure that if I am it will not be because of any particular effort to be so, because in replying to the President's letter I made some effort at facetiousness, and he treated me with such silence that I decided I would abandon any such plan.

The President: Whenever a judge gets facetious with me, I always suppose he is in dead earnest.

Judge Bell: Another reason why I cannot be funny is because I am like the little boy who was having his tooth extracted. He asked the dentist, "How much do you charge?" The dentist replied, "A dollar, if you scream, and fifty cents if you do not scream." Well, he proceeded to extract the little boy's tooth and the little boy didn't scream. He said, "Son, I see you didn't scream." "I couldn't," the boy replied. "Why couldn't you?" "Because I had only fifty cents." So because of the want of funny stories, I shall be obliged to abandon any thought of being funny.

I had a paper prepared that it would take thirty minutes to read. I asked Judge Powell how much time I might

have and he said, "not over fifteen minutes." So I want to assure you that I shall have to omit a great deal of the best of my paper. Now I am perfectly honest about that. I am going to skip at least half of it and I want you to understand that the best part is omitted. Now why should I be so candid with you about it? If I told you the worst part was omitted, you would never read it, if you saw it in the report of this meeting of the Association. If I make you believe that the best is left out, maybe you will read the report of it. I hope that the whole article will be embraced in the record because I have long wanted to see my name in print.

(For Judge Bell's paper, see page 150.)

The President: On yesterday in the course of the President's address I had occasion to make a confession. I am going to make another one this morning. Notwithstanding my strong affiliation with the Baptist denomination by reason of the connection of myself and my antecedents therewith, I am becoming somewhat of a Methodist in practice, because I am falling from grace so often and repenting so often.

When the next speaker to be heard this morning was a candidate for the position he now holds on the bench, I voted against him. I did it because I didn't know him as well as I do now, and because he was in favor of abolishing all technicalities. Now that I have known Judge Broyles, I have learned to love him and to respect his sterling character and honesty as a brilliant jurist, his common sense, his real ability as a judge, and I have discovered that no man who ever sat on the bench is more technical than he is. In future I will be glad to support him against any and all comers.

The next speaker is Judge Nash R. Broyles, Chief Judge of the Court of Appeals of Georgia. (Applause.)

Judge Broyles: Before beginning my remarks, I have a petition to present to the ladies here present. Ladies, the worm has turned. Behold a man before you, begging for

one of the constitutional rights of women. I ask to be allowed to keep on my hat in this drafty hall. I have two reasons for that. I am bald-headed and I have a severe cold, and to be perfectly candid, I may say that there is a third reason, and that is that no matter what you may think of it, it is a new hat. Hearing no objection, I thank you and will proceed.

(For Judge Broyles' address, see page 163.)

The President: Brother Yeomans and Brother Franklin will take notice Brother Broyles will be elected a member of that crowd who really amount to something in this Association. Judge Broyles will be the next leader of the "rough-necks." (Laughter.)

Judge J. R. Pottle, of Albany: I said once that Judge Broyles had no sense of humor. I want publicly to retract that statement.

The President: You were badly mistaken when you said that.

The next speaker in this symposium is one whom I have frequently had occasion to be up before. I have never known in advance what he is going to say as to any proposition presented to him upon the bench.

After he has got through, I have always wondered how any man could have had brains enough to think up what he really did say. The only time I have ever known him to be wrong when he did answer a proposition presented to him on the bench was when he ruled against me, and sometimes I have had some doubt as to whether he was wrong about that.

In presenting to you Judge Samuel H. Sibley, of the United States District Court for the Northern District of Georgia, I wish to say that the meeting of the solicitors general and district attorneys has requested that he make his remarks a connecting link, so to speak, between that body and this body, and that he address both bodies simultaneously and on the same subject.

(For Judge Sibley's address, see page 168.)

The President: I am glad indeed that Judge Sibley made that talk. The reference made in the President's address to the prohibition law was an incidental reference only, notwithstanding the fact that the newspapers and others may have seen fit to magnify it into being the principal part of the address. It was not designed to produce any discussion.

I want to say there is not so great diversity of opinion as may appear at first blush. I might say that Judge Sibley's court is one of the courts, and Judge Sibley himself is one of the judges, to whom the President had reference when he said that from the precincts of such a court men go forth to be better citizens and from the presence of such a judge men go forth to be more law-abiding. If all the Judges in this State had such eminent good sense as Judge Sibley has in the enforcement of this law, there would not be as much criticism of it and there would be much more respect for it. (Applause.)

His reference to his ancestry and mine, and the fact that John the Baptist was a total abstainer, reminds me of an incident in the life of Dumas. He was asked: "Dumas, you are a quadroon. What was your father?" "He was a mulatto," was the reply. "What was your grandfather?" "He was a negro." "What was your great-grandfather?" "He was an ape," Dumas replied, "my ancestry began where yours ends."

I want to announce that this symposium will be continued later. But before we pass on, I wish to say that the next speaker on the program, as originally designed, was one who is not present with us today. He is in that great court around which I have no doubt are gathered the great souls of those who in years gone by loved their profession, loved their fellowman, respected law and respected God. If from the spirit world men can look back on to this world, I have no doubt that he is today looking on us with that same love and affection he always had for this Association. The last communication I had from him was a letter, in which he

accepted the opportunity of addressing this Association this morning and in it he expressed his delight that he could come again on this floor and talk to us. He loved the Georgia Bar Association and the lawyers. I refer to Judge Beverly D. Evans, recently translated from the courts of this district to the Supreme Court above. Later on, there will be a memorial to him; but we cannot now mention his name without feeling keenly his absence and remembering him with all the love and respect we all had for him.

The Association will proceed no further with this symposium at this time. It will be taken up this afternoon at 3:30 o'clock.

The Association is going to be at ease for five minutes, after which we will have the annual address by our distinguished friend, Mr. Davis.

The President, after five minutes: Let the Association come to order.

I am requested by the solicitors general and the district attorneys to state that there will be a meeting of that body this afternoon at 2:30 o'clock. This announcement is made for the benefit of those who happen to belong to that body and who are present in this assembly.

The next thing on the program is the annual address. For that address the Executive Committee has obtained the services of a man of national fame as a lawyer, as a thinker and as a speaker. Our guest today is from the Middle West, from that section which has made such great strides and progress in legal development. He has been successful in active practice. In later days he was called into government service, first as counsellor for one of the great railway systems; afterwards as head of that department of the government during the war when the government took over the operation of the railroads. Out of that incident in our governmental experience has grown a number of unforeseen and unusually complicated situations. No one knows of them better than our distinguished guest today. In 1920 he was made the chief officer of the United States Railroad

Administration and he proposes to speak to you regarding some of the problems confronting the government in the course of its railroad administration, how they have been dealt with, and so forth.

I take pleasure in presenting to you Mr. James C. Davis, Director-General of Railroads of the United States of America. (Applause.)

Mr. Davis: Mr. President, Members of the Georgia Bar Association, and Ladies: It affords me a great deal of pleasure to accept this invitation. I have had occasion in the last few years to be quite intimately associated with some of the Georgia people and I wanted to find out whether the people of Georgia in general averaged up to the samples I had become acquainted with.

Of course I am extremely anxious to make a good impression on this audience. With that idea in mind, day before yesterday I bought a book on public speaking to try to "wise up" a little bit on the subject, and the best thing I read was that you want your audience to get acquainted with you. Now I have lived a very uneventful life, but I am anxious that you will get acquainted a little bit with me as well as my subject. My sister, who is married and who had a husband in the service spent a couple of months in the delightful city of Atlanta and when she came back she had some very fine impressions of the South. I might say, too, that I find myself perfectly at home in the South. While I was born in Iowa, both my father and mother came from Virginia and my mother was a typical Southern woman. She had all those physical charms and graces, those wonderful attributes of mind and character, that lovable disposition and that high regard for the real standards of life which have made the well-bred Southern woman a queen everywhere. (Applause.) So, when I come to the South, I feel really like, while at an advanced age, I am coming into my own.

One story that my sister brought from Atlanta was that a lady was calling on another lady and her daughter, and

during the course of the call the young woman rather bluntly asked the visitor where she was born. The visitor showed some reluctance but acknowledged that she was born in Georgia. When the visitor left, the mother of this young woman said, "Daughter, never ask a lady where she was born. If she was born in Virginia, she will tell you; if she was not born in Virginia, she is reluctant to acknowledge it."

You know I like the Southern idea of family. When I was quite a young man—and that is quite a number of years ago—I visited the home of my mother down in West Virginia on the Ohio River. I was a young man about twenty-five years old and I had a charming old uncle, an old bachelor, who was quite a character there. As I was leaving, he was bidding me good-bye on the front porch. He said, "Boy, remember the blood that is in you. You see that clearing across the Ohio River? Your great grandfather, Captain Bob Cox, cleared a place there and built a cabin. He was a great Indian fighter. One night he was leading an attack on the Indians and your great grandmother was in that cabin and in her lap was your grandfather. She didn't know whether her husband was coming back or not. Looking down, she saw a great big snake on the floor. She laid your grandfather down and killed that snake. While your great grandfather was killing Indians, your great grandmother was killing snakes. Boy, you can do anything." (Laughter.)

You know this job that Alex Smith and I have is temporary. The difference between "temporary and "permanent" is illustrated in an incident which happened a few months ago in a Republican convention in the State of Iowa. A man a little bit to the windward, after having partaken of the overjoyful cup, got up and registered his objection to the entire proceeding on the ground that there was no permanent organization of the convention and that only a temporary organization existed up to that time. A member from the Northern part of the State said to him, "Aw, you can't tell the difference between temporary and permanent."

"Of course I can tell the difference," our friend replied, "I'm drunk; that is temporary. You're a damned fool; and that is permanent." (Laughter.)

You know really I would like to tell you something about our work in Washington. I came down there about two years ago. Judge John Barton Payne, with whom I had been associated some during the operation of the railroads while the war was going on, asked me if I would come down and help him start his organization. I said, "What do you want me to do, Judge?" "Well," he said, "I would like for you to be the liaison officer." I didn't know what that meant. I don't think the Judge did either. (Laughter.) I came down there though and there was a vacancy in the General Counselship and he appointed me General Counsel. We had no preliminaries and I didn't know what the duties were. I went up next day and there was an organization with twelve to fourteen hundred people in it. I wondered what the General Counsel had to do.

After I had been there two or three months I went back to Iowa to the little town I was born in and after I had visited with my sister I took a walk down Main Street. When I got down to Fourth and Main Streets I found a drugstore where all the wise men got together. While visiting there, a great big tall fellow from out in the country named Bill Zoellers came in. In the old days Zoellers was always on my juries, when I could get him on them. (Laughter.) He believed I couldn't be wrong, and I never tried to disabuse him of that impression. After we had been there awhile, he said, "Well, Jim, what kind of a job have you got in Washington?" I said, "I will tell you my first day's experience. We have got a great big building there in Washington, twelve stories high, and I rode up in the elevator. I sat down at my desk on that morning. My office is in the eleventh story and the windows look out South. There on the left rises Washington Monument the most impressive edifice in Washington. A little to the left is the beautiful memorial to Lincoln and still further is Arling-



ton where lie the heroes of all of our wars. Then there is that beautiful shining, majestic stream, the Potomac, glistening in the sun. Bill, I sat down there looking at those sights and I had been there only a few minutes when in came a nice looking young fellow with a package of papers. 'Mr. Davis,' said he, here is a very important fire case and we have got to determine whether to settle it or sue it.' 'Where did it occur?' I asked. 'At Savannah, Georgia,' he replied. 'What was it?' 'An export cotton warehouse.' 'How much is involved?' '\$798,000.00.' I remembered that as I had passed a clothing store on one occasion, I had seen a dummy out in front of the store with a sign on the suit it wore, 'Take me home for \$7.98.' I couldn't help thinking of that sign when he mentioned this \$798,000.00 loss. Before I had taken up the fire case, in came another fellow and said, 'Mr. Davis, here is the Old Dominion Steamship Company case which has got to be settled today.' 'Why, have we got steamships, too?' I asked. 'What is this?' 'What is it?' 'It is the loss of the Princess Anne at sea.' 'What was she worth?' '\$1,850,000.00' 'Well,' I said, 'put the Princess Anne with the Savannah fire and I will look at them.' He had hardly gotten out before another fellow came in and said, 'Here is a telegram from the President of the Virginia-Maryland Railroad. He wants to meet you day after tomorrow and talk about his claim.' 'How much is his claim?' '\$9,000,000.00.' 'All right, tell him I will meet him at ten o'clock.' Another fellow came in, and he had a bigger package of papers than anybody else. I said, 'What have you got?' He said, 'We have got the equipment trust service, a very serious matter, and we have got to determine on that today. We have got a time limit on it.' 'Tell me what this equipment trust service is.' He said, 'don't you know?' 'No.' 'Well,' he said, 'the Government bought two thousand locomotives and one hundred thousand freight cars and located them on the railroads.' 'How much is that?' '\$378,000,000.00.' I said, 'Put that down.' "Then Bill," I said, "I touched a button and my secretary

came in, and I said, 'Please leave me alone for ten minutes.' Bill, I got up and looked out that window and there stood the Washington Monument as it was before and there was the Lincoln Memorial as it was before and I said, 'My God, how does it happen that all three of us are here at the same time?' " (Laughter.)

Whenever I get a lot of lawyers together, there is one story I always want to tell. I have no doubt every one of you have had moments of apprehension. Many years ago I had my moment of greatest apprehension. I was sitting in my office in the little Iowa town, where I was born and lived a good many years. My office was on the corner a half-story up from the ground and I could see up the East and West street and down the North and South street. On the North and South street was a street car. Suddenly I heard a tremendous concussion. I went out and found an accident had happened and that two men driving in a surrey had been struck by the street car. One of the men was prominent in the community, a judge of the superior court. His head struck on the curbing and he died within an hour. The other man was seriously injured. I represented the corporation in the personal injury suits. The complainants had sought to prove, as usual, that the bell didn't ring and that the car was going at an inordinate rate of speed. The lawyer for the plaintiff asked our witness, "About how fast was it going?" "Coming like a shot out of a gun," the witness answered. I objected and moved to strike the answer because it was a conclusion and the objection was sustained. The Judge said, "Tell the court about how fast you think it was going." The witness replied: "That car came down the hill like hell a beatin' tanbark." That was pretty fast, I gathered.

Just as I was beginning with my defense, court adjourned at noon, and one old negro whom I had always represented and who had a case down there against the railroad, came to me and said: "Mr. Davis, my little girl saw this accident and she would make a good witness for you." "Where is

she?" "She is at home." He lived just across the street, a couple of blocks from my office, and I went down there and found a little black kinky-headed darkey who looked to be about ten years old. I asked her about the case. She said that she was sitting there studying; that she heard the gong ring; that the motorman was beating the gong as fast as he could; that she looked down the street, and that the people who got hurt were not looking. That is the way I supposed it had happened. (Laughter.) I got the little girl on the witness stand. She looked the part of a little bit of an ill-nurtured child. She had on a little calico dress and she didn't look like she was ten years old. The first thing that came up was whether she was competent as a witness. I asked her if she knew what would happen to anybody if they told a lie. She said "they would go to hell," and the judge said she was competent. (Laughter.) I examined her in a very tender, anxious sort of way. "Now, my little girl," I said. "what made you look up?" In a shrill, child-like, treble voice she said: "My attention was attracted by the violent and unusual ringing of the bell." (Laughter.) The lawyer on the other side whispered so that everybody could hear him, "That sounds like Jim Davis' testimony." Everybody laughed. Then commenced the cross examination and that was the most apprehensive moment of my life. There she was, a little bit of a child, and an awfully smooth, oily fellow of a lawyer on the other side. "You know Mr. Davis, do you?" "Yes, sir." "You live right near his office, don't you?" "Yes, sir." "You pay your rent in his office, don't you?" "Yes, sir." I thought, "My God, don't you know anything but 'yes, sir?'" "He talked to you about the case?" "Yes, sir." "You tell the jury what Mr. Davis told you to say." That is when my heart quit beating, but in that same shrill, childish treble she said: "He told me to tell the truth, and no harm could come to me." (Laughter.)

Don't be distressed about this manuscript. It is not very long. I had rather make a poor speech, and speak ex-

temporarily, than to read a good one. By the way, Judge Sibley, I was very much relieved, if I understood you correctly, to hear you say that while a violation of the Volstead Act was a statutory crime, a man was not a real criminal if he took a drink. (Laughter.) I am also delighted to understand that the Federal Courts have adopted the rule of being very lenient for the first offense. I am always apprehensive. (Laughter.)

Seriously, gentlemen—and I am going to say, ladies—I think the most important question that confronts the American people today—and I bar none—is the transportation question. What are you going to do with it? I feel a little apprehensive that the ladies will grow somewhat tired of this discussion, but as you ladies are going to vote, you have got to inform yourselves on these questions. I have selected as the title of this address, "The Liquidation of Federal Control and some Results Following the Government Operation of Railroads."

(For Mr. Davis' address, see page 93.)

At the conclusion of the address by Mr. Davis, the morning session adjourned.

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### AFTERNOON SESSION, JUNE 2, 1922.

The afternoon session was called to order at 3:30 o'clock by the President, Judge Arthur G. Powell, of Atlanta.

The President: Let the Association come to order. The first matter on the program is a report of the Executive Committee.

The Secretary: Mr. President, we have the following applications for membership:

<i>Applicant</i>	<i>Residence</i>	<i>Endorsed by</i>
E. Kontz Bennett	Waycross	J. W. Bennett
L. E. Piedrick	Waycross	J. W. Bennett
Arthur G. Hack	Waycross	J. W. Bennett
Chas. L. Redding	Waycross	J. W. Bennett
Hamilton Douglas, Jr.	Atlanta	Harry S. Strozier

That makes sixty applications.

Mr. R. C. Alston, of Atlanta: Mr. President, I move that the rules be suspended and that the Secretary be instructed to cast the ballot of the Association for these applicants.

This motion was seconded and carried and after the Secretary had cast the ballot they were declared elected.

The Secretary: Mr. President, I will read a letter which comes to us from the Bar Association of the State of South Carolina, signed by the President of that Association. It is addressed to Judge Powell, as President of the Georgia Bar Association. The letter is as follows:

"Saluda, S. C., May 29th, 1922.

Judge Arthur Powell,  
Pres., Georgia Bar Association,  
Tybee, Ga.

Dear Sir:

Please express to the Georgia Bar Association the greetings of the South Carolina Bar Association.

We recall with pleasure our joint meeting with your Association in 1919, and we shall always think of our stay there as one of the brightest spots in our lives.

Any member of the Georgia Bar Association will always find a warm welcome at our meetings.

Our next meeting will be at Columbia the latter part of January, 1923.

Faternally,

(Signed) C. J. Ramage,

President South Carolina Bar Association."

Mr. R. C. Alston, of Atlanta: I move that the Secretary be directed to send a message of appreciation to the President of the South Carolina Bar Association also expressing our very pleasant recollection of the time when they met with us at this place.

Col. A. R. Lawton, of Savannah: I move to amend that motion by having it come from the President instead of the Secretary.

The President: Unless there be objection, I will let that be voted upon at the present time. Normally it should go to the Resolutions Committee.

The motion was voted upon and unanimously adopted as amended.

The President: We will hear from the Executive Committee.

The Secretary: We have on this afternoon, first the report of the Nominating Committee and the election of officers for the coming year. After that, we will have the report of the Committee on Memorials. We hope, also, to get in the reports of the Committees on Jurisprudence, Law Reform and Procedure, on Federal Legislation, on Interstate Law, and on Legal Education and Admission to the Bar. The papers this afternoon will be the papers of Judge Beck and Judge King, and, if we have time, the paper of Mr. George S. Jones.

We are going to have a very interesting session tomorrow morning, with Mr. A. L. Franklin, of Augusta, on the program for "Stories of a Northeast Georgia Law Practice," and Judge Roscoe Luke for "Stories of a Southwest Georgia Law Practice." We assure you that if all of you will stay over to this session tomorrow you will find it to be one of the most interesting we have held.

Tonight we will have the entertainment by St. John's choir and the Bethesda boys.

The President: I wish to emphasize what the Secretary has said on behalf of the Executive Committee in regard to tomorrow morning's session. We have saved for the last thing in the morning this symposium by these two artists. We will expect some voluntary contributions to this symposium from other members of the bar, giving some anecdotes, and so forth. It is going to be a very enjoyable ses-

sion. We will adjourn about 12:00 o'clock, noon, tomorrow.

The first matter on the program arranged for this afternoon by the Executive Committee is the report of the Nominating Committee, of which Mr. S. S. Bennet, of Albany, is Chairman.

Mr. S. S. Bennet, of Albany: The Committee on Nomination of Officers for this Association for the next year report the nomination of the following gentlemen:

President—Z. D. Harrison, Atlanta.

Secretary—Harry S. Strozier, Macon.

Treasurer—Logan Bleckley, Atlanta.

Vice-Presidents:

First District—A. B. Lovett, Savannah.

Second District—J. H. Tipton, Sylvester.

Third District—Warren B. Parks, Dawson.

Fourth District—W. G. Love, Columbus.

Fifth District—Chas. B. Shelton, Atlanta.

Sixth District—Chas. Akerman, Macon.

Seventh District—Alex. Harris, Rome.

Eighth District—Miles W. Lewis, Greensboro.

Ninth District—N. L. Hutchins, Lawrenceville.

Tenth District—W. M. Howard, Augusta.

Eleventh District—Millard Reese, Brunswick.

Twelfth District—A. S. Bradley, Swainsboro.

Mr. President, the rules also require that we name one of these Vice-Presidents as First Vice-President, and the Committee has chosen to be the First Vice-President Mr. W. M. Howard, of Augusta. They have nominated as members of the Executive Committee the following gentlemen:

Hal Lawson, Chairman, Abbeville; G. C. Grogan, Elberton; H. H. Swift, Columbus; B. W. Fortson, Arlington.

The President: It seems that the "rough-necks" got into power on that Nominating Committee after all, especially in the nomination of the President. (Laughter.) Is there a motion in respect to the report of this Committee?

Mr. Orville A. Park, of Macon: I move that the rules be suspended and that the Secretary be instructed to cast the ballot of the Association for the gentlemen named.

This motion was seconded and carried.

Mr. Z. D. Harrison, of Atlanta, who had just come into the meeting: Mr. President and Brothers of the Bar Association: To say that I am pleased is a feeble expression of my feelings at this moment. Indeed, I am most happy; but, Mr. Chairman, the Committee has made a mistake. Deep down in my own consciousness I feel that I am not eligible to the high office for which I have been nominated. For more than fifty years, I have been Clerk of the Supreme Court. You know that I could not have discharged the duties of that office and as a lawyer have achieved much. I could not. The President of this Association should, as a lawyer, have achieved. As a member of this Association, he should stand out prominently for character and splendid ability. Such members you have in every section of this State.

I pray you, Mr. Chairman, Mr. President and Members, that that report, so much of it as refers to the presidency, be recommitted, and I make a motion, Mr. President, to that effect, and I ask my friends—

Judge P. W. Meldrim, of Savannah, interrupting: I move that we table the motion.

The President: Mr. Harrison's motion is out of order, and therefore a motion to table is out of order.

The Secretary: Mr. President, I take great pleasure in casting the ballot of this Association for the gentlemen named as the officers of the Association for the next year.

The President: And they are declared elected.

We will now resume the judicial symposium commenced this morning. The next speaker on the program is a beloved member of our Supreme Court, undoubtedly the most eloquent man on that court or any other court in Georgia. He is a man of rare ability, always charming as a speaker, but the reason he has been such a drawing card to produce



this large attendance at this Association is not on account of his brilliancy as a man and as an orator, but because of the fact that we all love him and love to honor him.

May I present Judge Marcus W. Beck, of the Supreme Court of Georgia? (Applause.)

Judge Beck: Mr. Chairman and Members of the Convention, Ladies and Gentlemen: When I came down to this Association, I was suffering from a severe sore throat and hoarseness, and while it has to some extent been relieved by the sea breezes, I doubt very much whether I will be able to speak through the fifteen to twenty minutes allotted to me so as to make myself heard by any considerable portion of this audience.

When I received the invitation to participate in this symposium, it was through a letter written by the Secretary, suggesting that I prepare and read a paper on the subject of "Why a State Judge?" I promptly declined because, as the invitation came from Mr. Strozier, I thought that the question was seriously proposed. (Laughter.) A few days afterwards the President of the Association called upon me personally and renewed and pressed the invitation, and then I felt that something of a load had been lifted, now that it was relieved of its very serious character, and I accepted.

But, after considering the matter several days, and endeavoring to make it partially serious and to some extent humorous, I found after dictating for an hour or two to my secretary, that I had only succeeded in making it dull. But I don't hesitate to read it, however dull it may be, because after the very lively debate we had here on yesterday which was continued today, in which the issues were sharply joined, I thought that something dull might be soothing to the Convention, and allay the feelings which have been somewhat stirred up. (Laughter.) On yesterday we had a most eloquent address by the learned, able, forceful President of this Association on the Twin Sister of Liberty and he concluded with some very forceful remarks in regard to the Volstead Law. I do not remember a great deal that was

said by him, but I have the general impression that he wound up with some remark similar to that with which Cato always concluded his remarks when he spoke about Carthage—and I don't remember his ever speaking about anything else—"Carthago delenda est." My pronunciation is a little bit old-fashioned. There was a continuation of the debate on that subject this morning, and I don't profess to remember all that was said on the floor here today, but I have the general impression that it concluded with the eulogy that Sir William Braxton pronounced when he concluded his essay on the Common Law of England, "Esto perpetua." (Laughter.) I also observed with considerable pleasure the absolute impartiality of this audience in distributing the applause, which was absolutely so equally balanced that I couldn't tell whether the applause was given by different sections of the Association to the different speakers or whether the same members had warmly applauded both.

I shall not discuss the Volstead Law or any collateral issues. I remember several years ago, when I was first invited by this Association to make some remarks, or a speech, or an address, it was on the subject of "Juries." I have forgotten what I said about them. I have not read the paper since I delivered it, and I don't suppose anybody else has. (Laughter.) I think though that there were some remarks in there about "the palladium of our liberties." I was young then. I am old now, and I am called on to say something about "Why a State Judge?" What I may say may fall far short of what I said on the former occasion, but at least I shall not say anything about "the palladium of our liberties." (Laughter.) I took the precaution—and I don't intend to skip that page—of eliminating those parts of my paper before I came down here. I am very much indebted to my distinguished friend, Judge Bell, for the suggestions he made in his paper about skipping pages as he went along. I observed that nothing that was said by him was more warmly applauded or more heartily approved by the Association than his remarks from time to

time in the course of his address that he would skip a page. (Laughter.) The only thing he said that brought more universal applause than the statement that he would skip two a page was when he said that he would skip two pages. (Laughter.)

"Why a State Judge?" I have been chasing that thought for several days. It seems so easy to answer. I thought of one answer and then I thought of another answer and then I rejected both and then I rejected the decision to reject both and finally I said, "Oh, the devil," and it occurred to me that that exclamation was about as good an answer as could be given to the question. Possibly his Satanic majesty has something to do with that state of affairs which makes a judge, in the language of Judge Broyles, of the Court of Appeals, as to "Why a Judge," "a necessity." I will not dwell very heavily upon that thought of the thesis, however. After reaching the conclusion that, while the question was not as serious as I had inferred it would be when Mr. Strozier stated it, I also came to the conclusion that it was perhaps more serious than it appeared to be, when the President of this Association mentioned it. So I consulted several members of the bench. Now, as I stated in the beginning, I don't know whether I will be able to read all of this paper, and, if I skip spots, I know there is nothing that will meet your more hearty approval than skipping a page or two now and then. I skip the first half page. (Laughter.) As I stated, I approached some members of the bench about this question. When I asked Judge Hines "Why a State Judge?" he stated that he thought this was the wettest May he had ever seen. (Laughter.) I reached Savannah early Thursday morning. Coming out here, I met Judge Adams, and I asked him "Why a State Judge?" I don't know whether he made a remark about the weather, or not, but whatever he did say, it was equally relevant. (Laughter.)

Some gentleman to whom I was introduced suggested that a discussion on the conflict of laws might be relevant in this connection, and I don't know but that he was right. If

I had had time, I would have prepared a paper on that subject, because, as the oldest man, I would have had the conclusion on the Federal judges. I have often had the opportunity of concluding on the State judges. (Laughter.) I think it would be extremely agreeable to conclude on a Federal judge, but, when Judge Powell stated he was following the date of commission, I knew I would not be the last speaker. I shall omit another page or two. (Laughter.)

For the "temporary" purpose of this paper, I consulted the works of a very wonderful man, Voltaire, and I turned to see what he said about Judges. He didn't say anything about them. (Laughter.) He had the word "judgment" and the next word he had was "Judea," and all he said about Judea was that he thanked God he had never been there. But that was aside. Here I will cut out another page. (Laughter.) I then tried Bacon's Essay on "Judicature," only three or four pages, and I thought in his way he had stated "Why a Judge?" but he did not answer that question. By the time I had read these various references, I felt like Proctor Knott did in his speech on Duluth. He came to the conclusion that there could be no real satisfaction in life until he had located Duluth. It has been some time since I read Proctor Knott's speech, and it has been some time since I have read any other Congressman's speech. (Laughter.) But that question stuck in Proctor Knott's mind—"Where is Duluth"? He was satisfied that the glories of the universe would never be properly unfolded until he had located Duluth. I struck one page out here, but I believe I will read this. (Laughter.) No, I will skip that, too. I believe I will skip another page or two.

I did intend to say something about a "symposium," where they have become perfectly fraternal, after having had several drinks together. A man never knows as much philosophy and theology as when he has had a few drinks and has got himself into a frame of mind for a real symposium. (Laughter.) After having reached this stage,

the symposium takes place. While "symposium" has that idea of drinking together, it would be utterly inappropriate here at Tybee Island. (Laughter.) I have not had any such symposium with Judge King, or with Judge Sibley, or with Judge Broyles, or—well, I had better not extend it too far. (Laughter.)

(For the address by Judge Beck, see page 181.)

The President: I am quite sure, if this Convention had to pass judgment on the debate, they would decide with the affirmative, but it is only in a justice court that a decision is made at the end of the first argument, and we must hear the concluding argument.

Georgia is quite fortunate in the fact that one of her leading lawyers, a man who has stood head and shoulders above his fellows as a leading member of the bar, has been placed on the Federal Bench as a Judge of the Court of Appeals of this Circuit. He is a gentleman who has often honored this Association by his presence. We always love to have Judge King with us. We are delighted that he is here today and that we will now have the pleasure of hearing him. Judge Alex. C. King. (Applause.)

Judge King: Mr. President, Ladies and Gentlemen of the Association, Ladies and Gentlemen: I cannot hope to please your fancy and raise your mirth in the manner of the very eloquent gentlemen who have preceded me. The truth is that I took this invitation seriously. I thought it was to be entirely a serious discussion, especially the proposition as to "Why a Federal Judge," which question I was instructed I was to endeavor to answer.

There is one reason, however, that makes me less desirous of indulging in mirth, and that is that two very charming ladies were debating this afternoon as to whether they would come over here, or whether they would take a nap. I promised that I would furnish the soporific, and I will now undertake to make good that promise.

The solution of the question of "Why a State Judge?" really is very apparent from the very brilliant paper, which

you have just heard from Judge Beck. It will be my humble purpose to suggest why there should also be a Federal Judiciary.

(For Judge King's paper, see page 196.)

The President: Gentlemen, the next matter on the program will be the report of the Memorials Committee, including a personal tribute to Major Joseph B. Cumming to be delivered by Hon. William H. Fleming. The Secretary will read the formal report, which is quite short, and then Mr. Fleming will present the tribute to Major Cumming.

(For the Report of the Committee on Memorials, see page 229.)

Upon the completion of the reading of the memorial to Major Joseph B. Cumming by Hon. William H. Fleming the afternoon session was adjourned.

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### MORNING SESSION, JUNE 3, 1922.

The morning session was called to order at 10:30 o'clock by the President, Judge Arthur G. Powell, of Atlanta.

The President: The Association will be in order. The first thing this morning will be a report by Mr. H. H. Swift, of Columbus, Chairman of a special committee appointed under a resolution passed at the last session of this Association in reference to an additional Federal Judgeship in the State of Georgia. Mr. Swift, gentlemen.

During the reading of Mr. Swift's report President Powell requested Vice-President Z. B. Rogers, of Elberton, to take the chair.

(For the Report of the Special Committee on Federal Courts, see page 276.)

Mr. Z. B. Rogers, presiding: You have heard the report of this Committee. What will you do with it?

Judge Roscoe Luke, of Atlanta: I move that it be adopted.

Mr. H. H. Swift, of Columbus: I would like to say this. In saying what I do I speak for myself personally and not for the Committee. The bill which provides for a third judge for Georgia, along with twenty-two other judges for districts in the United States, is now pending in a conference committee of the House and Senate. If it is the sense of the bar of Georgia that a third judgeship should be created, then some action should be taken here at this time, because with the situation as it is Georgia is without a friend at court. The majority of our representatives in the House voted against the bill, and the two Senators from Georgia also voted against it. The provision for a third judge for Georgia was included in the Senate amendment because undoubtedly the members of the Judiciary Committee of the Senate reached the conclusion that if additional judges were necessary anywhere, then an additional judge was necessary in Georgia because of the conditions which I have referred to in the report of the Committee. As I say, the bill is now in a Conference Committee of the Senate and House. It is receiving no support from the Georgia Senators or Representatives. Possibly if the Bar Association of Georgia could reach any agreement on the proposition and should pass some resolution today, urging those members of the Conference Committee to recognize the situation in Georgia and give some relief, it might have some effect.

Mr. L. Z. Rosser, of Atlanta: Speaking just for myself, I hope there won't be any more United States judges in Georgia for the present. I am entirely satisfied with what we have got, with some few reservations. (Laughter.) The United States Courts in Georgia are nothing but police courts now. Immense numbers of cases are not being tried. As far as I am concerned, I have as many police courts in the State as I want. Not that I have suffered any, but I have a disinclination for police courts. I never went into a police court that I didn't see more injustice done in five minutes than justice. They deal with the sufferers of the world and there

is not one in a thousand that deals with it with kindness and gentleness.

Another reason I don't want any new judges just now is that we have not the proper party in power to give us new judges. Really, if I have to trust such an appointment to the Republican party, I had rather have a little liquor now and then. (Laughter.) I apologize for making that statement, but just think about the Republican party furnishing us judges right now. I am opposed to it.

As a matter of fact I don't think that the United States Judges, when they are really appointed and are fit for their jobs, ought to be put to trying little police court cases. Let's have some Commissioner to try these little liquor cases. I understand that drinking liquor is now worse than to commit murder, but we will get over that after a while. (Laughter.) We will have a day of sanity. I see no chance for it to come right now, but it may come in spite of the apology of Judge Powell. (Laughter.) You know, when we get a man who will make a good speech, the next morning he apologizes for it. The trouble about it with Judge Powell is that he is afraid the Judge won't be with him some time. I am not at all surprised at anything he might say along that line, because to lose his case would be a worse calamity than liquor.

I am in favor of enforcing prohibition against everybody but myself (laughter), and I am in favor of enforcing it against myself, if I am caught. But because we have got prohibition and because there is some liquor drunk is no reason why we should have a lot of new judges who will simply try little police court liquor-drinking cases.

I am opposed to having new judges just for that little trouble and that's all there is in it. Our courts are not crowded with any other cases but those. If we are going to have that sort of trials, let's have a Commissioner to try them. Let's have the dignity of the court in keeping with the dignity of the crime. (Laughter.) Let's not have a judge of the United States court spend his lifetime in trying



cases like that. The ordinary State Judge knows how to deal with this thing. He sits down and charges a half an hour on prohibition and two minutes on murder. (Laughter.) That's a fact. I have sat down and heard it until I was ashamed. I met a judge once on the streets of Atlanta, and he said, "Oh, the country has gone wrong." I said, "What's the matter with it?" He said, "You know I put a man in the chaingang down in my county for selling liquor and they are about to pardon him out." "What have you got to do with it? Do you put everybody that sells a little liquor in your circuit, in the chaingang? Do you put every fellow in the chaingang? Do you really put everybody in who violates the law in your Circuit?" "No, I don't do that." "But if he sells a little liquor you put him in, and then say the country has gone wrong, if he is pardoned out."

Why, I sat in a court room in Georgia—I don't know whether our friend from Columbus is here or not—and I saw a crowd of women come into court as a committee to call the judge to taw. They insisted that he put everyone who violated the prohibition law in the chaingang, and he agreed to do it. He said he would put everyone of them in the chaingang. He didn't put everybody in for stealing, fighting and violating the Sabbath, but if a man violated the prohibition law, he was a criminal who had to be punished severely. Then I said to him, "You ought not to have done that. You did wrong. Let's take the old Ninth District where they are making more liquor than anywhere else. Suppose they caught some old fellow up there who had induced some neighbor's boy to help him make a little liquor; would you put that boy in the penitentiary?" "No." "Well," I said, "What did you lie to those women for?" (Laughter.) I said, "Let's go over to old Union County. There's a boy that has got a wife and children and his crop fails; he has made a little liquor for the first time in his life under the pressure of starvation; would you put him in the penitentiary?" "No." "Well, you ought not to have lied to those women."

We have got to the point in Georgia, not only about that but about a great many other things, where the people direct the judges. What have they got to do with the judgments of the courts? What has popular clamor got to do with it? I expect whiskey ought to be abolished forever after I die and after Powell's death. I want to leave enough for Powell to enable him to stand up for his convictions, in spite of a United States Judge. (Laughter.) When Powell sees one of his cases going down the road, he runs after it. He is well developed in brains, but his legs are a disappointment.

I hope we won't have any more United States judges for the present. I will risk these State judges because they find out how the people are thinking and their ears are to the ground. When they find it out, their ears flop up and down like a flutter-mill. I don't want any more judges for the present. We have got more now than we need. We have got six Court of Appeals judges and six Supreme Court judges and they can't hear a fast writ within a year. I don't want to worry them about it. (Laughter.) I don't want to hurry them. They are bad enough when they are in composure, and, if you ever get them excited, like my old friend in Campbell County said, "I don't know what would happen."

At this point the President resumed the Chair.

Mr. R. C. Alston, of Atlanta: I think that report is very meritorious. We have enjoyed Mr. Rosser's argument about the police department of the United States Judiciary, but there is a good deal more to it than that.

Mr. Rosser: Bob, who do you want to be a United States Judge? You are neither a Republican nor a Democrat, and you couldn't be appointed. (Laughter.)

Mr. Alston: Georgia is the biggest State East of the Mississippi River—

Mr. Rosser: I heard that before.

Mr. Alston: It had enough business for three districts before the Volstead Act was adopted. There ought to be

three districts in the State. The civil business in the United States Court is badly behind. That is certainly so in the Southern District, and I think it is so in the Northern District. It is somewhat less so in the Northern District, but certainly badly so in the Southern District. I think our representatives in Congress made a mistake in opposing the bill to create a third judgeship. The reason which the newspapers attributed for that was the fact that it was an omnibus bill and that some judgeships would be created which were unnecessary. That may or may not be true, but that there is need for another judgeship and another district in this State there can be no doubt, in my opinion. I don't think the fact that the power to appoint is in a Republican President and the confirmation in a Republican Senate, ought to withhold the granting of another judge, and I move, Mr. President, that this report be adopted and that the contents thereof, or a summary of the contents thereof, be transmitted to our Senators and Representatives.

Mr. Rosser: If you want it really done, you had better not pass it by this body, because I don't know of anything, that was ever asked to be done by this body that was ever done. He ought to withdraw that proposition. We have been asking the Legislature of Georgia to do things for fifteen years, and they have never done anything yet, and I don't blame them much. (Laughter.)

Mr. Alston: In some measure Mr. Rosser's statement is true. I have watched that for a good many years. What happens is that this Association offers a resolution and it brings out facts such as are brought out in that report. We get our resolution to the Legislature before the State has become educated upon it, and we lose for the time being; but there are very few things, which this body has passed resolutions upon, or has asked the Legislature to make into law, which have not finally become law.

Mr. Rosser: Mention one.

Mr. Alston: We are not dealing now with the State Legislature, but we are dealing with the National Congress,

but I will state that one of the things was to increase the number of Judges of the Supreme Court. Another thing we asked the Legislature to do was to create the Court of Appeals and increase the salaries of those officers. Another thing was to increase the salaries of the Supreme Court Judges all of which for the time being were defeated and all of which are now the law. The proposition to permit women to come to the bar of this State was pretty much ridiculed on this floor, but the discussion on this floor resulted in the enactment of a law which opened that field to women.

Mr. Rosser: Now just listen! When Bob made that speech in favor of women coming to the bar he had a red head, and it's white now.

Mr. Alston: I understand this report does not carry a recommendation. I move that this Association request our Senators and Representatives in Congress to support the bill, or the part of the bill, which creates another Federal judgeship for this State.

Mr. Orville A. Park, of Macon: I second that motion.

The President: The Committee reports on the situation without recommendation. The motion first before the house was to adopt the report of the Committee. As a substitute Mr. Alston now moves that the sense of this body be conveyed to our Senators and Representatives in Congress as expressing the view that there should be an additional Federal Judgeship in Georgia at the present time. The substitute will be voted upon first.

The substitute offered by Mr. Alston was carried by a vote of 39 to 12.

Mr. R. C. Alston, of Atlanta: Mr. President, for a long number of years Judge J. Hansell Merrill was one of the most faithful attendants upon the meetings of this association. He was the President of the Association at one time. Judge Merrill is now in the State of Colorado, where he is trying to get well of a lingering illness. I move that the Secretary of this Association send a telegram to Judge

Merrill, expressing our regret at his absence and our hope that he will soon be permanently restored to health.

Mr. Orville A. Park, of Macon: I second that motion.

The President: Normally that would go to the Resolutions Committee, but I will allow it to be voted on now.

The motion was unanimously carried.

Mr. T. A. Hammond, of Atlanta: I happen to have the address of Judge Merrill, and I will give it to the Secretary.

The President: The next matter on the program is the Report of the Committee on Jurisprudence, Law Reform and Procedure, of which Mr. W. Carroll Latimer, of Atlanta, is Chairman. Mr. Latimer was prevented from coming to this meeting of the Association, and I will ask that the Secretary read the Report before the Association. It is comparatively short, and Mr. Latimer asked that it be read before the Association. He was sorry he couldn't be here. He had to cancel his reservation at the last moment.

The Secretary read the report to the Association.

(For the Report of the Committee on Jurisprudence, Law Reform, and Procedure, see page 266.)

Mr. L. Z. Rosser, of Atlanta: I want to say one word "temporarily," and with the same disposition to apologize. I am afraid to say anything about the Supreme Court or the Court of Appeals because they have got the last say at me and sometimes they say it in a way that I don't like, but there is a crying trouble in the State on that question. 'A fast writ of error ought not to stay there a year, and I move we adopt that resolution or the suggestions of the Committee.

I am not criticising the Court especially, but our plan of going to the Supreme Court is all wrong. Everybody who has ever gone there knows its wrong. There is no reason in the world to take up an immense mass of testimony that will make a man take most of his life to read it. There

is no necessity for that and we ought to change it. They won't consider the question of whether the evidence was wrong or right, unless you give the name of the witness. They can't consider the facts. If you don't disclose the gentleman's name, they can't consider his eligibility. They can't determine whether the witness is correct or not. They are not going to consider it unless they are given his name. They won't do it—but something ought to be done. We ought to go to the Supreme Court differently. We didn't used to carry 500 pages of written testimony there, when you are not going to consider anything except whether John Smith was going to be allowed to testify.

I promised not to say anything about the judges, and I am not going to except that I think they can speed up a little. There's nothing wrong about that. You know I don't want to say anything that I ought not to say, but something ought to be done. The idea of taking a fast writ and keeping it there ten months. Now I am not going crazy on speedy trials. I think you can turn a courthouse trial into a mob. I have known it done time and again. I think, when you try a man by a mob in the courthouse, its worse than not to try him at all, but I think if they can speed up a little and we can change the way of going to the court, we can make better progress. You have got to read an enormous amount of chaff to get a little piece of gold. I tried to get them to change it. That was before Judge Hines got there. The trouble is, when we talk about a thing, that makes them delay it. If we had kept out of it, and hadn't said a word about it, they would have increased those salaries five years before they did. They delayed it on your account and mine. We offered to go and prepare a bill.

Let me tell you what's a fact. I'll say this about the Judges of the Supreme Court. They are as conservative as they can be. If they were to take two steps where they have been in the habit of taking one, there would be a cataclysm. Let's change the system, so they can decide quickly. They are men of ability and courage and understanding.

They want to do right. If anybody doubts it, I will make my "corporeal" affidavit about it. Something ought to be done, and in about 15 to 20 years they will do it. But something ought to be done now. There isn't sense in taking that enormous amount of testimony to the Supreme Court, when they are not going to consider it except to determine the name of the witness. They won't do anything else. If a decision is wrong, if you have got a direct error, one that shocks the legal sense, they will sit down and weigh it and decline to turn a page to see whether right or justice is done—of course I can't complain—but in order to sustain some Superior Court judge they will read 600 pages. To find the truth they won't look outside of the particular matter they have got in hand. To sustain a Judge they will read 10,000 pages, if necessary. (Laughter.) Judge Hines, that's right, isn't it? (Laughter.) We ought to have this change and it isn't fair to criticise the judges. In fact, emulating the example of Judge Powell, I'll apologize. I'll apologize again, if you want me to. Now, Judge Hines, don't you remember against me what I am saying because I am really trying to help you, you know. Something ought to be done and it ought to be done now. This old archaic way of going to the Supreme Court of Georgia is like traveling in an ox-cart as they did a hundred years ago, when we have got automobiles to travel in.

Let's not be in such a hurry to railroad people to conviction. Judges of the Superior Courts think it is their business to convict somebody. That's a mistake. Their business is to see that they have had an honest fair trial. They have got no business convicting anybody. If Judge Humphries was here, I would say that too. I remember Judge Hopkins was said to be the fairest trial judge in Georgia. Let me tell you what a gentleman who sat in his court for years told me about him. He said in Judge Hopkins court, when they were trying a criminal case, it looked like there was something serious being done. He said it looked as if a burial service was going on. Not a single frivolous remark or act was going on. He

was interested in giving the prisoner the fairest possible trial. He didn't say he could make a statement and couldn't make another one. He would let him make another one. He gave the man a fair trial, gave him a perfectly fair trial, one about which there could be no dispute; and, if the jury found him guilty, he reached over and got a penstaff and gave him the limit of the law. And that stopped crime in Fulton County. They convict enough of them now, but there's too much rail-roading in it. I am not a criminal lawyer and I am entitled to say it. The solicitors general runs the courts, and they ought to quit it.

If you give a man a perfectly impartial trial below, and then go as speedily as you please to the Supreme Court and sort of stir them up a little and make them move a little faster, we will get along better. I move we adopt that. That's a little radical.

Judge J. R. Pottle, of Albany: Mr. President, I am opposed to the adoption of that report. As far as I am concerned, I am unwilling to go on record as approving a report, which in my opinion contains a reflection upon the Judges of the Appellate courts of the state. (Applause.) The statement in that report that the courts will not function is not only unfair, but in my judgement untrue. There is no trouble with the courts. The courts are bound by the law. They are travelling as fast as they can. The trouble, my friends, is more with the lawyers than with the courts. I have been both. I tried to be a judge for a little while and I have tried for a good many years more to be a lawyer. Take some of you lawyers—you send up briefs to the Supreme Court with 400 pages and then you get mad if the court does not read every line in your brief. That's not the trouble. The trouble is with the system. I have thought a good deal about it. There are two remedies for this thing and you can't get the Legislature to adopt either one of them. One is to limit the right of appeal. The other is a thing which the courts themselves could do if they would, that is require the record to be printed. That would save them a



large amount of work. That would speed up the work a great deal. It would cut off a lot of trashy cases. I know a man who formerly sat on the Court of Appeals who said that time and again lawyers would send up records there containing hundreds of pages when their cases could have been stated in a dozen pages. There's one of the main troubles. The trouble is not with the judges. The trouble is with the system, and I am unwilling to adopt a report formally tendered before this Association, that contains an unwarranted reflection on the Appellate courts of this State.

The President: I wish to say that Mr. Latimer's position is misunderstood. Mr. Latimer was attacking the system and not the judges. He said the judges owe it to themselves to change the system.

Judge Pottle: He ought to change the language.

Mr. H. F. Lawson, of Hawkinsville: While this Committee was preparing its report, there was considerable correspondence between the members of the Committee before the report was adopted, and at least two drafts of it were submitted by mail to the members of the Committee before the report now before the Association was sent in, I think it only fair and proper and just, without the apology, which Brother Rosser speaks of, to say in the first place that the Committee did not think after reflection that the verbiage of the report was unfair or that it was inaccurate; and certainly there was no intention on the part of any member of the Committee in the slightest to reflect upon the Court as a whole or any member of the Court. Judge Pottle has stated clearly and accurately what the Committee was aiming at—not the judges, not the courts, but the system—and it was the view of the Committee that through this means—and I am not asking you to adopt the report on behalf of the Committee; I am not asking that at all—by bringing the attention of this body to a fault which Judge Pottle admits himself exists some steps would be begun to be taken, by which the evil would be remedied.

Mr. Rosser: If there is any suggestion of harsh words in that report by Mr. Latimer, he does not mean that in any sense whatever.

I don't want to put myself in the attitude of criticising the judges. I am a little afraid to do it really. If there should be any change necessary to be made in the verbiage that can be done.

The President: The motion before the house does not relate to that feature of it. The motion is to adopt the suggestion that a Committee be appointed from this Association to confer with the court.

Judge Pottle: I understood the motion to be to adopt the report as filed. That's the motion I am opposed to.

The suggestion of the Committee for the appointment of a Special Committee was adopted.

The President: I will name on that Committee Mr. W. Carroll Latimer, of Atlanta, as Chairman; Mr. S. S. Bennet, of Albany, and Mr. H. H. Swift, of Columbus. Of course, if it becomes necessary to carry out that suggestion which relates to legislation, the Legislative Committee will have that in charge. These two Committees should work together.

Is the Committee on Legislation ready to report, Mr. B. J. Fowler, of Macon, Chairman?

The Secretary: Mr. Fowler gave me his report, and I will file it.

(For the report of the Committee on Legislation, see page 275.)

The President: Is the Committee on Interstate Law ready to report, Mr. Archibald Blackshear, of Augusta, Chairman?

The Secretary: Mr. Blackshear has promised to furnish a report to be filed.

The President: When it is received, it can be embraced in the proceedings.

The President: Committee on Membership, Mr. Rollin H. Kimball, of Winder, Chairman. Is Mr. Kimball

present? (No response.) I am sorry he is not. I wanted him to stand up and let all of you see the man who gave us this splendid list of new applications for membership. There is Mr. Dillon there, who is also a member of that Committee. He did excellent work. Have you any report, Mr. Dillon?

Mr. Walter S. Dillon, of Atlanta: We have no report. There is one idea in my mind—there are so many absent members. They ought to get to this Convention second-handed. I therefore think that some way ought to be devised to get the report in the hands of these absent members at an early day. I make that merely as a suggestion. I suppose the Secretary will work that out.

The President: I think the reason for delay in getting the last report out will probably not occur again.

Reception Committee, Mr. R. L. Denmark, Chairman. He is not present. I think the Association is indebted not only to the Reception, but also to the Entertainment Committee of the Savannah Bar Association for giving us probably the most pleasant meeting we have ever had.

Mr. Orville A. Park, of Macon: I would like to offer this resolution:

**"RESOLVED:** That this Association hereby expresses its very great appreciation of all that has been done by the Savannah Bar Association, and the members of the Savannah Bar, to make this meeting a success."

Mr. Millard Reese, of Brunswick: I would like to see some special reference made to St. John's Choir and the Bethesda boys.

The President: There will be a resolution on that.

Mr. Park's resolution was then put to vote and unanimously carried.

Mr. H. F. Lawson, of Hawkinsville: I want to offer the following resolution:

**"RESOLVED:** That the thanks of this Association are hereby tendered to the choir of St. John's Church and the Bethesda boys for the delightful entertainment

afforded by them to the members of the Association on the evening of June second."

This resolution was put to vote and unanimously carried.

Mr. A. L. Franklin, of Augusta: I offer a resolution that the thanks of this Association are due and are hereby tendered to the press for the consideration given this meeting, for the excellent manner in which they have reported the same, and for the notices carried in advance of the meeting.

This resolution was put to vote and unanimously carried.

The Secretary: It has been customary in the past, and I think we ought to do it this year, to thank Hotel Tybee and its manager, Mr. Wagoner. I therefore move that the Association extend its thanks and express its appreciation to Mr. Wagoner and his associates in the hotel for the courtesies shown us and the efforts put forth for our comfort and convenience during our Convention.

This resolution was put to vote and unanimously carried.

The President: Next is the Report of the Committee on Legal Education and Admission to the Bar, Mr. Warren Grice, of Macon, Chairman. He is "temporarily" absent.

The Secretary: He turned the report over to me, but I don't think we will have the time to read it.

The President: Let it be filed and embraced in the proceedings.

(For the Report of the Committee on Legal Education and Admission to the Bar, see page 268.)

The Secretary: One matter I would like to bring to the attention of the Association. Last year under a resolution offered by Mr. A. L. Henson, a Committee was appointed from this Association to act with a Committee appointed by the General Assembly to raise a fund to put a memorial to Alexander H. Stephens in the Hall of Fame at Washington. Mr. Henson has submitted a report which I will not read, but which will be embraced in the proceed-

ings, which merely says that the Committee appointed under the resolution of the General Assembly has not had a meeting. He thinks his Committee ought to be continued, and makes that recommendation to the Association. I would like to move that that Committee be continued for another year.

This motion was seconded and carried.

(For the Report of the Special Committee on Memorial to Alexander H. Stephens, see page 282.)

The Secretary: One other thing I want to bring before the Association. As you know, the Georgia State Library takes care of the Library of the Association. We have a valuable library consisting of all the reports of all the Bar Associations in the country. A good many of those reports come in bound in paper and it has been our custom to bind them. Mrs. Cobb has them bound for us. A large number of those reports are getting in bad condition, and Mrs. Cobb says they can be bound for \$40.00 or \$50.00. What does the Association want to do with these reports?

Mr. R. C. Alston, of Atlanta: I move that this appropriation be made.

This motion was seconded and carried.

Mr. T. A. Hammond, of Atlanta: I don't know whether it is quite in order at this time, but generally, when the Treasury of the Association has permitted, there has been an appropriation made of \$100.00 to help defray the expenses of the Commission on Uniform State Laws. I do not know the condition of the Treasury at this time.

The President: Mr. Strozier tells me that it is probably inexpedient to offer that at this time.

Mr. Hammond: Inexpedient?

The Secretary: We haven't got the money, Mr. Hammond.

Mr. Hammond: I am not going to offer a resolution that the appropriation should be made, but I was going to offer a resolution that it be referred to the Executive Committee, and, if the Executive Committee see that it is practi-

cable and possible, that they make another appropriation this year of \$100.00 for this Commission on Uniform Laws.

The President: The Executive Committee would have that power. I think the by-laws give them that power when the Association is not in session.

Mr. Hammond: I think they ought to find a way to do that. Georgia is the only State in the Union that does not help pay the expenses of this Commission on Uniform State Laws; and the only way that Georgia has ever been represented in defraying that expense is through a small appropriation made out of the funds of this Association. I hope the Executive Committee will find a way by straining just a little bit to make that appropriation, because it ought to be in some way helpful to that body.

The President: Unless here be objection, the matter will be referred to the Executive Committee.

We have had so much serious talk from our serious friend, Mr. Rosser, and others, that we wish to relieve the tediousness by putting on our symposium. We have had some of our great humorists of the State Bar to address us in the past, one of the best of whom was Judge Hammond, but it has been found that we have one even greater than Judge Hammond. He confesses he is going to be the next Judge of the Augusta Circuit. I am pleased to present to  
(For Mr. Franklin's address, see page 210.)

The President: Mrs. Franklin, who is present, and is always present with Lonnie, as his chaperone, is accused of having written Lonnie Franklin's speech. She wishes me to deny it. She says she did not do it.

Between the fruit salad course, which we have just had, and the dessert course, which is coming on with our friend, Judge Roscoe Luke, it is necessary for us to introduce a short entree. There will be a short paper, which was written by Mr. George S. Jones, of Macon, delivered by his partner, Mr. Orville A. Park, of Macon.

I would like to ask Mr. John W. Bennett to occupy the chair a few minutes.

Mr. John W. Bennett, of Waycross, Vice-President, took the chair.

Mr. Orville A. Park, of Macon: I really do not know that it is quite fair to the audience to sandwich in the muton between the two courses the President has just mentioned. It is possibly necessary or proper that one word of explanation should be made as to Mr. Jones' absence. He has a young son, who is an ensign in the Navy, stationed at present on the Pacific Coast. This young man married a girl of the Golden West recently. His father was not able to attend the wedding, and he had arranged to go out with the Rotarians, and in order to see this new daughter-in-law, before the Secretary's request that he prepare this paper came. It was too late then to change his plans, and he prepared the paper, and prevailed on me to read it. This is a companion paper to Mr. Lawson's, and should have been read at that time.

(For Mr. Jones' paper, see page 131.)

The President, during the reading of this paper, resumed the chair.

The President: That is a very excellent paper, and it is going to make a very valuable contribution to this year's report.

If it were not for Judge Roscoe Luke's nature, we could not have afforded to have postponed until this hour his address, even though it is customary in a repast to save the best for the last. We have done that today. Everybody knows that Judge Roscoe Luke is a brilliant man. To speak of his brilliancy as a lawyer would be but to speak what every one knows, whether personally acquainted with him or not, but I do believe that of all the humorists of Georgia, no man has such a keen and subtle and ever-present sense of humor as my highly-esteemed friend, Judge Roscoe Luke,

whom I now present to this audience to wind up this very happy and enjoyable meeting that we have had.

(For Judge Luke's address, see page 218.)

The President: The program for this meeting of the Association is ended, and I declare this body now adjourned sine die. God be with you till we meet again.





# APPENDIX



## THE TWIN SISTER OF LIBERTY.

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ADDRESS OF THE PRESIDENT  
ARTHUR G. POWELL,  
OF ATLANTA

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Often have I felt my incapacity to measure up to an opportunity; but never more keenly than now. Lust for office has never been my besetting sin. Yet I confess to you that long ago the hope and ambition was born in me that I might some day become president of this Association. But now that, out of the goodness of your hearts you have bestowed this honor upon me and I am faced with the duty of delivering the address required by the by-laws, I find myself in the situation depicted in Milton's lines:

"Abashed the devil stood  
And felt how awful goodness is."

I am going to speak to you about law, not confining myself to any particular phase of the subject. However, this is a day of catching headlines, so I have selected as the title of my address, the phrase, "The Twin Sister of Liberty." It is taken from the writings of that great jurist and teacher, Rudolph von Jhering, who tells us that "Law is the twin-born sister of Liberty."

He gives us this epigram as the complement of the maxim that "Discretion is the weapon of tyrants." He has in mind the antithesis between law and discretion; the fact that where one begins the other ends, and *vice versa*.

If I were addressing laymen and not lawyers, it might be necessary for me to demonstrate this antithesis; for it is difficult for the lay mind to understand why the judge may

not vary the law to meet what is called the natural justice of the particular case; not realizing that if the judge had the discretion to vary the law in individual instances, the law would not be law at all. Its rules and its commands would be mere precepts, rights would not be uniform and fixed, but would rest in the discretion of those given the power of decision—mere men, wise or unwise, just or unjust, or whatever else they might be.

Just as in the evolution of civilization, the progress has been from a state in which there were tyrants and slaves toward a state of equality and liberty for mankind, so in the evolution of the administration and enforcement of human rights the progress has been from discretion toward law. Liberty and Law were born out of the throes of the same evolutionary process; the one given to man that he might pursue his personal independence and live his own life free from all restraints save those imposed for the common good of all men alike, and this is Liberty; the other given to man for the protection of that liberty, and this is Law.

Many think of the law as the work of man; as if it consisted in the enactments of law-making bodies. The fundamentals of the law were there before the foundations of the earth were laid. Man's task is to discover, to declare and to apply the law. Statute-law, legislative enactments are but a puny part of the law—man's sporadic efforts to declare specific phases of the law; often declaring it contrawise to what it should be and always declaring it with that modicum of imperfection which inheres in all human effort. Theoretically, there is now and ever has been a law determining the effect of every human activity and defining the status of every person and every thing. We have progressed in the knowledge of the general nature of law till the principle is now established that although the legislature may never have declared the law on a given subject, it is nevertheless the duty of the courts to recognize that there is a rule on the

subject and to declare it as a part of the law and to enforce it as such.

Our systems of jurisprudence bear throughout their history the footprints of the evolution through which they have developed. I will not quote the definition of the word "evolution"; it sounds too pedantic. But most of you have read Spencer, Huxley and other writers on the subject and know that the characterizing element of evolution is that it is a continuous process by which that which once was in a state of organized simplicity progresses to a state of organized complexity. I could take you to any well-equipped law library and show you the evidences of this process on the backs of the law books; could prove it by the testimony of the labels. In the contents of the books it is even more clearly marked.

Law is no longer in the state of chaotic nebula; its progress toward the organized form is well advanced, though the urge of the cosmic hand is still upon it. What is to come, what the end will be, I do not profess to know; that rests in the knowledge and in the purposes of God. But I do know that the law has come into its present prominence and power through the action of the same natural forces as those that eroded away the surrounding country and left Stone Mountain standing above it all in its monolithic solitude and grandeur.

The law is a magnificent phenomenon of nature.

Picture to yourselves a great river flowing through the land. Whence came its waters; whither do they go? Out of the sea they came, gathering into clouds and deposited far away on the hills and plains in the form of raindrops; then pressed on by nature's mighty urge, through rills and rivulets and bolder streams, they found the river and there move resistlessly onward to the sea whence first they came. Here and there, along the river's flow, we see where the channel has been dredged or where the jetties have been

placed—man's contribution to the great process that nature has put into force and is conducting.

So I like to think of the law. I see it moving onward as a broad river. The waters that feed it were caught up from that great sea which is the bosom of God and deposited in those hills of time which constitute the ages that are past. Now they are flowing home again in a majestic stream of jurisprudence. Parliaments and legislatures have dredged here and there, have placed a jetty against this bank and that—these statutory enactments being man's contribution; the rest is Nature's work, is God's.

It is true that the development of the law has not yet reached, and probably never will reach, the point of perfection. Till the whole body of the universal law is brought from without the nebula, till the range of law fixed and declared becomes as all-inclusive as the range of abstract law itself, we, of necessity, must entrust the enforcement and protection of many of our rights in greater or less degree to the discretion of judges and other arbiters, and though we know that discretion is the weapon of tyrants, we have no other recourse. However, if we look backward, into the annals of English jurisprudence, we find that from early times the striving of our forefathers has been to deprive the tyrant of his weapon, to increase the volume of fixed law and to diminish the discretion of those in power as to granting or refusing rights. Despite the progress made along these lines in the course of the centuries, the cry may still be heard, as in Israel of old, "Give us a King." Not that they phrase it thus—what they say is, "Give us more of abstract justice and less of fixed law; let judges and juries decide each case on its own facts and circumstances, unrestrained by precedents and legal technicalities."

They forget that the benevolent tyrant of today may be a Nero on the morrow.

It is true that many of those who are most blatant in this outcry have only a very loose idea of what they wish to do

about it. They are like the little boy who wakes in the night crying and calling out: "Mamma, oh Mamma!" "What do you want, son?" "I've got the stomach-ache, that's what I want."

However, the protest against adherence to precedents and against legal technicalities is not confined to the unthinking classes. It is often voiced in high places, by professional men, by editors of eminence, even by learned lawyers and judges. It is not to be ignored as the cant of the chronic obstructionist or as the lawless propaganda of the Bolshevik. It becomes us as thinking men, having our country's good at heart, to meet the issue fairly, and if those who demand less law and more discretion in the judicial administration of human rights are moving along lines that are promotive of the common good we ought to give them our co-operation; if not, we ought to strengthen our stand against the tendency, and ought to be able, when challenged, to give the reason for the faith that is in us.

Public opinion is not to be ignored. I shall not stop now to mark certain differentiations between the voice of public opinion and the transient clamor of the populace. Here I will merely say that public opinion bears the same relation to the law that root and stem do to fruit and flower. Relaxing the metaphor, I will say that it is the vital force out of which the law grows and through which it exerts itself. There is no dynamic force in laws, in and of themselves. "The rules of navigation never steered a ship; nor the law of gravity never moved a planet."

Among the more serious charges that those who are of such station in life and of such prominence in shaping public thought that their views cannot be ignored are making against the laws are these: That there are too many technicalities; that judges decide cases by precedent instead of deciding them according to what is right and wrong; that the delays of the law are intolerable, that justice should be speedy; that laws are too intemperate and often unwise; that



the law no longer maintains its majesty; that respect for the courts and for the law is on the wane.

The demand for fewer technicalities, of course, is merely the demand that in the administration of rights there shall be less law and more discretion.

It would be difficult to give a succinct definition of what is popularly meant by "technicalities," but we may illustrate it. If a criminal is put on trial but by some slip the necessary proof is temporarily absent and he is acquitted, and, though the proof may be forthcoming on the very next day, he cannot be tried again because the law says that no man shall twice be put in jeopardy for the same offense; or if a defendant indicted for burglary is discharged because the proof shows that he entered by an open window when the law says there must be a breaking before there can be a burglary; or if he is acquitted by any similar failure of the law to reach his case—the failure in justice occurs because the law is fixed and the court has no discretion, but in common speech we say the prisoner escaped by a technicality.

If an application of the parol-evidence rule or the Statute of Frauds, or the law of negotiable instruments results in a judgment being rendered compelling some honest old farmer to pay a note obtained from him by some sharp swindler, the old farmer and his friends cry out that he has been robbed by the technicalities of the law.

I think the examples given are fairly illustrative of what are commonly called "technicalities." It is assumed in each case that the application of the law as it is written has brought about a result that offends against somebody's sense of justice and that if the judge or the jury, as the case may be, had been vested with discretion instead of being bound by law a different result would have been reached.

It will readily be seen that if the prohibition against a man's being twice put in jeopardy for the same offence can be relaxed in the discretion of the judge in any case, there is no longer a law on the subject; the constitutional guarantee is merely a platitude. The same is true as to the parol-evi-

dence rule, the doctrine against defenses to commercial paper in the hands of innocent holders, and as to every other rule of law intended to be uniform in operation.

For if a judge has the discretion of refusing to apply a law in one case, he can refuse to apply it in another; and whenever he will. If any judge has such discretion, all his fellow judges of the same class have the same discretion. Likewise as to juries.

If the judge were always an infallible arbiter of justice, if jurors never made mistakes of head or heart, if they never felt the bias of friendship or the warp of political influences; and if *all* judges and *all* juries were thus high-minded and honest and possessed such wisdom as to know plain justice in *all* cases, then perhaps we might safely trust them to administer our disputes by their discretions and without the restraints of invariable law—without the restraints of technicalities, if you wish so to call it.

If we were to substitute judicial discretion for fixed law in our courts the personal equation would have free play, and individual notions of right and wrong are so variant that the inequalities of justice would be startling.

For instance, a few years ago, the mayor of a small town in Georgia sentenced a boy to ten days in the State penitentiary for saying "durn it," on the public streets. The town marshal had actually carried the boy inside the stockade of a branch of the penitentiary and put him to work when the State authorities discovered the status of the matter and interfered.

On the other hand, there is a story current in bar circles of a police judge in one of the steamboat towns on the Florida West Coast. A negro named Gator (contraction for Alligator), who ran a dive near the boat landing, had become so habitual in his appearance before the court as to arouse the judicial ire. "Gator," said the old judge, "you've been coming up before this court every Monday morning for shooting and killing somebody until I'm getting tired of it. This thing of you niggers shooting and killing one another

every Saturday night has got to stop. This time you've pleaded guilty to killing two. I'm going to make an example of you, I fine you five dollars and if you come up here again, I'll add on the costs."

If technicalities and fixed formal laws were all abolished, the rich and the powerful might be able to hold their own against some of the tyrannies which inevitably flow from unlimited discretion. The rich might be able to buy their way, the powerful might safely trust to their power, the popular might rely upon their popularity; but how about the weak, the poor, the uninfluential, and the stranger that is within your gates?

A few years ago, a young foreigner came to one of our cities and set up a small fruit stand and restaurant business. He brought his old mother with him and soon after his arrival here married a girl of his own race. These three kept house in a room back of the restaurant and the young wife assisted in the business. One night a man came into that store which was also a home, humble though it was. He was a popular man. He was large and fine looking. He was drinking. Finding the young wife alone in the store, he made an improper proposal to her. She resented it. Her husband came in about that time and she appealed to him for protection. The little Dago ordered the big man out. The big man infuriated that this little foreigner should thus order him about, and with a most insulting statement as to his purposes toward the young wife and as to the Dago's inability to help himself, started on to the little fellow with his powerful fists and knocked him down; but as the Dago arose he got hold of a pistol which he kept on a shelf under his counter; and he shot, and the big man fell dead. The little foreigner was indicted and in the trial made his statement to the jury, admitting all the facts as I have detailed them, and ended with these words: "In this whole country there are only two people who care one thing for me, and that's my mother and my wife. When I married that girl I didn't marry her for a day or for a year but for all of her

life, and I tell you that just as long as I live I'm going to protect her if I can, if it costs my life to do it."

This was one of those cases as to which, throughout the South at least, a certain unwritten law is supposed to apply. But in this case the little Dago had no friends on the jury and the dead man did; and they convicted him

His case came to the Court of Appeals while I was a member of it. The opinion of the court was written by Judge Russell, that golden-hearted jurist who so well loved to hold the shield and buckler of the law between the weak and the oppressor; and Judge Hill and I gladly concurred in it, for he declared, what the Supreme Court had also declared, that the right of a husband to defend his home and his wife against him who invades the one to despoil the other does not rest on unwritten law, but on the law as it is written, and that judges and juries have no such discretions as to extend its benefits only to the powerful and influential and to deny it in the case of any one, no matter how poor or friendless he may be.

Whatever else may be said of technicalities, at least say it to their glory that they are not the subject of barter or sale—that they are beyond the purchasing power of money or influence; for the thing in the law that creates technicalities is its uniformity, the fact that the law as it is written cannot be varied in any particular case.

Another legal safeguard much inveighed against is what the lawyers call the doctrine of *stare decisis*, or what is more popularly called adherence to precedent. The inquiry is a fair one: Why should a judge in passing on a case today decide it by following what the courts have done in similar cases in the past? Why should not the judge use his own wisdom, his own sense of justice, his own views as to right and wrong, and decide the case by his own judgment, instead of allowing what has been done by other judges in former cases to control him?

Now, one of the most primordial and yet most universal and enduring instincts of mankind is expressen in the maxim,

"Equal rights to all." Every man feels that he is entitled to the same measure of justice as his neighbor receives.

Even children feel this. If the mother spans Johnny for meddling in the jam, he will feel that he is the victim of grave injustice if his brother Willie, who shared the spoils, does not also share the spanking. When a boy says to his mother, "You let brother do that, why may not I?" he voices the primitive demand for precedent.

The courts in deciding the disputes of mankind, as they have arisen in their varying phases, from time to time, have shaped their judgments in line with these natural instincts. Hence, a judicial decision is not likely to be expressed in the form, "Since John Smith has done so and so, the rule as to him shall be so and so, but "Whoever does so and so, shall by law be required to do so and so." And even though the decisions of the courts are not verbally expressed in the formula of "Whosoever" or "whensoever," a generality is nevertheless implied; for it is recognized as a matter of elemental fairness that if a rule is announced as to one man it should apply to every other man under similar circumstances.

Out of this arises the doctrine, generally adhered to in England and America, that the courts shall apply to no man's case a rule of law which it would not be proper to apply to the case of every other man under like conditions. Hence it is customary to print and publish the decisions of the courts, especially these of the higher courts, so that the same rule of law which has been applied in one man's case may be applied to all other similar cases that may arise. Thus judicial precedents are established.

The advantage of that certainty, whereon lawyers may safely advise and business men safely act, which is destroyed by non-adherence to precedent, is too obvious to require further mention.

This does not mean that a precedent once set cannot be changed. If the courts find that the right rule has not been announced in a former decision, the precedent can be repudiated and a new rule announced; but, in decency, the old

rule must be repudiated from thenceforth and not merely refused recognition in an individual instance. Indeed, the great body of the law in England and in America today consists of such portion of that almost numberless mass of precedents which has been accumulating since the days of Edward I, as has, under the law of the survival of the fittest, escaped repudiation for being unsound or inexpedient.

The methods of procedure which the courts have adopted and to which they generally adhere in the attempt to ascertain the truth and to do justice between man and man, may seem cumbersome and inefficient, but it must be remembered that they have been evolved from the experience of centuries, that they have been tried in the crucible of time, that they have passed the scrutiny of hundreds of the greatest minds of successive ages, that the inexorable doctrine of the survival of the fittest has left them standing when theory after theory, and plan after plan, and legislative scheme after legislative scheme have fallen away and have been forgotten.

The requirements of uniformity and orderliness which the precedents and technical rules of law impose upon the courts often work considerable delay in the disposition of cases; and from time immemorial men have complained of the law's delay. There are cases in which to delay justice is to deny justice. It is conceded that, if cautiously and intelligently worked out, some changes might be made in our laws which would diminish this delay and ameliorate the hardships which are sometimes occasioned. But this is a work that can easily be overdone. Certain requirements of slowness and of caution which produce much of the delay complained of are essentials without which the law and the courts would fail of their object and the rights and the liberties they are designed to protect would soon be impaired, if not destroyed.

Let me illustrate: The distance from Columbus, Georgia, to the Gulf, down the Chattahoochee and Apalachicola rivers is about twice what it is by direct overland route, due

to the many sharp bends around which the steam boats go with great difficulty. On one occasion a restless passenger made complaint to old Captain Wingate, who has been running on the rivers for many years. "If I were the Lord," he said, "and was going to make a river to run boats on, I would not make a crooked thing like this." "Yes," replied the old captain, "you would play hell. If this river didn't have these curves and bends in it to slow down the water it would all run right out, and instead of having slow boating, we would have no boating."

A few years ago I read a newspaper account of a court that had been established in one of the larger Western cities in which the misdemeanors were usually tried on the day or the day after they were committed and felonies within less than three weeks. The statement was also made that more men were convicted than ever before in the history of the city.

I once knew of a mob that went out and in the course of twenty-four hours quietly lynched eight negroes, one of whom probably committed the crime that aroused the mob. The court just referred to entails some public expense; the mob paid for its own ammunition and made no charges for its services. And, furthermore, there was just as much majesty in the mob, just as much to inspire respect for law as there can possibly be in that court, if the newspaper account of it is to be believed. In all seriousness, a court proceeding with such haste and with such informality can do but little more than carry out the views of the police force or of the aroused public mind as to the guilt of the persons accused of crime.

There are but few of us who could afford to be tried on our looks, and yet when I was a member of the Court of Appeals, counsel for the prosecution in a case that came there seriously contended that, although the evidence did not show that the defendant was guilty, nevertheless, the conviction should stand, because the judge who had tried the case, without a jury, had seen the defendant and he looked guilty.

Here is a point that should be underscored. Charge almost any man with a crime, while it is fresh, and in the eyes of the police, he looks guilty. This is the character of the evidence which (even in preference to sworn testimony) often appeals to the court and to the jury in what is usually referred to as speedy trials.

When I speak of speedy trials my mind recurs to the history of one that occurred on an April morning nearly two thousand years ago in a land across the sea, before one of the most magnificent courts the world has ever known. It was in Jerusalem, and no student of legal history will gainsay the statement that at the time Jesus Christ was arrested and brought before the Jewish courts for trial the Hebrews had developed a most perfect system for the trial of those accused of crime. Every safeguard against popular prejudice, against false testimony, against hasty judgment, had been guaranteed to the accused by the written law and by the custom of the courts. But this man Jesus was accused of an offense that excited popular indignation, and under the pressure of the mob these courts, even the magnificent and learned court of the Sanhedrim itself, swept aside all forms and technicalities and put Him through a series of the speediest trials recorded in all the history of the courts. You know the result. And on the following Friday there was enacted on the summit of Golgotha a tragedy which, even in its least phase, should have been an object lesson to all mankind. There were three crosses. Upon two of them, the right and the left, there hung two thieves; doubtless they had been formally tried and legally convicted in the ordinary course of the courts. But in the center there hung an innocent man, a good man, and, even if we waive aside the element of his divinity, one whose only crime was that he was a prophet of righteousness—and He was the one who had been given the speedy trial. And I have no doubt that the contrast there presented between the results of orderly administration of justice and the result of a speedy trial has been re-exemplified time and again in greater or less degree in the experience of courts both ancient and modern.



Remember the words of Chief Justice Bleckley in *Cochran v. State*, 62 Ga. 733: 'Those who are impatient with the forms of law ought to reflect that it is through form that all organization is reached. Matter without form is chaos; power without form is anarchy. The State, were it to disregard forms, would not be a government but a mob. Its action would not be administration, but violence. The public authority has a formal embodiment in the State, and when it moves, it moves as it has said by its laws it will move. . . . There is no dispensing power. Courts have none. Courts are bound by the law no less than the prisoner at the bar.'

The procedural technicalities with which the law surrounds practice in the courts bear very much the same relation to the administration of the law that conventionalities bear to social life. Strip the law of technicalities or social life of conventionalities, and the weak, the pure, the fair-minded and the good find themselves at once the victims of wiles and improper advances which neither justice nor society has found any other method of restraining. As truly as conventionalities distinguish and protect the amenities of polite life from the indecorum and vulgarity of the ill-bred and the impure, so do technicalities distinguish and protect the dignity and the majesty of the courts from the brutal uncivilizing spirit of the mob.

If there needs be a lynching let the mob do it; do not ask it of the courts. The courts must not pander to the mob. Speedy trials do not allay the mob spirit; they set the example, they inculcate and foster it. Even if there were a remedy, the remedy would be worse than the evil. Of course, I am speaking of the trial in chief. Motion for new trial and appeal should be disposed of with all reasonable dispatch, not because the mob demands it, but because common sense and justice demand it.

The high prize of our calling is that we of the legal profession may boldly speak our thoughts; and I am going to say that the main trouble with our laws and the administra-

tion of them today is that we have abolished too much of form and technicality, that we have sacrificed too much of orderliness, that our courts exercise too much freedom in breaking away from the precedents, that too much is being left to discretion and what is most important, that we are paying too little regard to uniformity and equality of justice.

I wish to dwell for a moment on this last proposition. An instinct that is a heritage of American citizenship impels us to put our faith in the uniformity of laws. Something deep down within us tells us that there is no justice save equal justice. The pass-word of American citizenship is "liberty." Yet no man has liberty if before the courts or in the eyes of the law, his neighbor has special privileges which he cannot equally enjoy. Whenever the demand is made by any class or group of men, whether it be made by the voice of labor or of capital, or by whatsoever other voice, that they shall be immune from the ordinary processes of the courts or exempted from the general provisions of the law, so that acts shall be right if committed by them and wrong if committed by others, or that the courts may not deal with them as they deal with others, an assault is made upon that liberty and equality which is the foundation of our institutions.

Probably our Constitution is strong enough to protect us against laws directly creating any gross inequalities in this respect. The real danger lies in any movement that seeks to take these things out from the operation of fixed laws and commit them to the realm of discretion, be that discretion the discretion of the judge or jury, of board or commission, or even of the President of the United States himself.

I am no Roman Catholic. I am a Baptist and my forefathers as far back as I can count them were Baptists. Some of the family are bold enough to claim that John the Baptist was named John Powell. I do not know about that, but I do know that no reason exists for any bias in my mind in

favor of the Catholic religion. But I am an American citizen and know something of the meaning of the word "Liberty," and when I see statutes passed in the guise of law for the purpose of giving to some board or officer a discretion by which the members of the Roman Catholic Church may be persecuted, I am filled with abhorrence.

This is supposed to be a land of religious freedom and of liberty of the conscience; yet can you sum up the wrongs that would be done to Jews and to Catholics, even in this very State of Georgia, if most of their rights were not protected by fixed laws instead of being left to discretion? And this is true, notwithstanding the large number of useful, upright, honorable, high-minded citizens found in the membership of these two sects. However, this spirit of religious persecution is so foreign to the inherited instincts of our people that the hope is strong within me that it will soon pass away; and I am bold enough to prophecy that the day will come when the descendants of Mr. Justice James K. Hines will point with pride to the dissenting opinion in that case in our Supreme Court wherein the majority upheld the enforced reading of the King James version of the Bible in our public schools, as having been written by their ancestor—an ancestor of whom they may well be proud.

Discretion is the weapon of tyranny and there is no tyranny like the tyranny of an unrestrained democracy. We are the people; but, thank God, we are not free! Give praise to the wisdom of our forefathers that this is a government of liberty and not of unrestrained freedom—that we are a people held in restraint by the limitation of a Constitution and by a system of laws inherited from that noble race across the sea that prized liberty because they had won it by long struggle and had kept it through the guardianship of an eternal vigilance.

You know the story of Ulysses. Over his men his will was absolute; none dared to disobey him. This great leader desired to hear the singing of the sirens and yet he well knew that all who had ever passed the enchanted shores up-

on which these weird musicians dwelt had found themselves unable to resist the charm of the music and had thus been lured to their destruction. So, as his ship approached the place where the sirens were, he caused his men to lash him securely to the mast. He then instructed them that at all hazards they should row him by the enchanted spot and well out of reach of the music before they should release him, no matter how much he implored them to the contrary. He then made his men pour wax into their own ears so that they could not hear the music, and could not hear his commands or entreaties while he himself was under the spell of the magic voices. And thus he passed in safety.

So, too, our forefathers, recognizing that in this country of ours the will of the people would normally be as unrestrained as was the will of Ulysses and that there would come times when under the entrancing spell of popular excitement and political upheavals the people would forget the high purposes for which our government was ordained, arranged the plan whereby officers and judges were commanded to pour into their ears the wax of written law and judicial precedent, and the will of the people themselves was lashed to the mast of the old ship of State by the thongs of the Constitution.

In a democracy, the tyranny of the masses, in their momentary impulses, is the tyranny most to be feared. Liberty cannot long exist in any government wherein individual rights are not protected by a constitution and laws strong enough to resist the appeal of that slogan of the mob, "Let the majority rule."

The momentary impulses of the populace, no matter how widespread they may be, the temporary wish and will of the majority, no matter how vehemently voiced, are not to be confused with that other and very different thing—public opinion.

These momentary impulses are transient and inconstant; they sway back and forth with every wave of popular excitement or emotion, while public opinion, in the true sense of

the word, expresses those lasting ideals and higher purposes which have become crystalized and constant.

Public opinion is the photograph of the nations better self taken on time exposure.

I have already made reference to the vital relation that public opinion bears to the law, and to the fact that laws can never be enforced unless they have its support.

Herein lies the excellence of the common law, that harmonious body of jurisprudence given to us by Nature as the product of evolution, already adapted to the things that are old and freely adaptable to every new thing that time brings forth—it is rarely found in conflict with public opinion. The changes in it take place so slowly, so naturally that we are hardly sensible of the changes unless we view it in long historic reaches; yet it is rare that a principle becomes permanently fixed in the consensus of public opinion without its soon being given recognition as a part of the common law.

I realize of course that historically the expression "the common law" includes only that body of unwritten legal principles which were enforced in England as having immemorially existed prior to the time of Edward I; and that in order to include those developments which have taken place in this underlying body of our jurisprudence since then we sometimes use the phrase "the general law." So it must be understood that I am using the term "common law" as including all that body of jurisprudence that has been developed in this natural way, and in contrast with those statutory enactments, artificially imposed, often as the result of momentary impulse or transient popular upheaval, and constituting the mere excrescences of the law. This common law, this general law, this vast all-inclusive system of jurisprudence, ancient and honorable, embodying ethical principles and moral concepts, older than Sinai, codified into the commandments and into Christ's new commandment, embodying rules of property and of civil relationships rooted so far back in the recesses of time that neither the memory of man nor the annals of his recorded history can trace them

to their sources, embodying the refined wisdom of immortal generations, sanctioned by the permanent consensus of enlightened public opinion throughout the centuries, this harmonious gift of God to men, let us simply call the Law. And the rest of what has been written into our books, prefaced by the phrase, "Be it enacted," let us call the statutes. And, of course, if what follows the "Be it enacted" is in harmony with the law as we have defined it, that, too, is a part of the law.

I am making this distinction prefatory to discussing certain strictures which are commonly being made against the law and to which I have already made reference, namely, that our laws are intemperate and unwise, that they are lacking in wisdom, in justice and in moderation, that the law no longer maintains its majesty, that there is a growing disrespect for law and for the courts.

I would be glad to deny these charges *in toto* if I could, but frankly I cannot do so. All over this country, honest-minded men, good law-abiding citizens, are harboring deep down in their souls a feeling that they hesitate to give expression to, that the law, instead of being the shield and buckler of their liberties, is but a mask to hide the sword thrust of tyranny.

Let us seek the reason and see if we cannot draw a distinction.

The majesty of the law cannot be maintained unless it commands respect. Respect is a state of the mind; and this is true of respect for the law.

The Century Dictionary defines "respect" as "The feeling of esteem, regard or consideration excited by the contemplation of personal worth, dignity or power; also a similar feeling excited by corresponding attributes in things."

There may be pretense and outward show or respect that the mind does not consent to; but respect itself does not exist unless it be excited by the object of it and truly felt.

As to the law proper, the general law, the common law, as I have defined it, certainly it should command the esteem,

regard and consideration of all who contemplate its worth, its dignity and its power. But can as much be said for our modern statutes?

The law has been developed through the maturity of wisdom; statutes for the most part are the creatures of sudden impulse. The law is temperate, the harshness of each general rule relieved by the just exceptions that form part of it; many of the statutes are harsh and draconic. The fitness of the law has been proved by its survival under the scrutiny of public opinion; statute is often the fruit of some transient wave of popular impulse or some outburst of fanaticism. Law, therefore, has the support and confidence of public opinion, whereas often the statutes have only the punitive sanctions of their own provisions to guarantee their enforcement.

Hence I propose the explanation that it is the statutes and not the law generally that have created this widespread feeling that our laws are intemperate and unwise and have generated that disrespect for the law which is impairing its majesty and its power.

A statute lacking the support of public opinion cannot be generally enforced. If it were never enforced it would be mere surplusage. But the fact that it is enforced in some cases and not in others makes it a weapon of tyranny.

The minds of men are so constituted that when they see some laws enforced in a partial manner, they feel justified in shielding themselves and their friends as far as they can behind a partial enforcement of all such other laws as may conflict with their interests—a very dangerous state of mind when we reflect that it is through our own general citizenship that our laws must be enforced.

You are thinking of the prohibition law. So am I; and I am going to say a few words about it. However, in order to avoid embarrassing any of you, I will now make it plain that in what I have to say I am speaking personally and not in my capacity as president of this Association.

I do not ask you to agree with me, but it is my calm deliberate judgment that no enactments of such wide-spread viciousness, of such universally debasing effect on our law and the enforcement of it, of such potency in arousing disrespect for law and the courts, have ever before imposed upon our people.

Rum has its undoubted evils, the bar rooms were intolerable nuisances, the influence of whiskey interests in our politics was debasing to the last degree; yet in flying from these evils, we have flown to worse.

We were told that liquor was the cause of crime, that it made widows and orphans, that it was practically the sole author of poverty and distress. Have crimes decreased? Are there fewer widows and orphans? Is there less poverty and distress?

Immediately following the passage of the State-wide prohibition-law in Georgia in 1907 (long before the war) the capital-felony docket in the Supreme Court increased in a startling ratio: a condition that the passage of time has never relieved. There has been a decrease in petty crime. The history, and as one who professes to have studied the question deeply I may say that the natural effect of the passage and the enforcement of a drastic prohibition law is to diminish the number of petty crimes and to increase the number of felonies. Slight folly is oftentimes an antidote for crime.

The wave of homicide that swept over Georgia on the passage of its State-wide prohibition law found its counterpart in the wave that swept the nation on the passage of the National Act. It is no gross exaggeration to say that where rum has slain its thousands, prohibition has slain its tens of thousands.

Liquor has its uses and its abuses. We have destroyed or at least seriously impaired it uses, and have left ourselves a prey to its abuses.



A prohibition law absolutely enforced would have some economic compensations, but it would entail a moral loss not to be measured in dollars and cents.

If you do not believe that the dragon's teeth are being sown in Georgia soil, ride along one of our public roads and see the chaingangs at work; notice therein the large number of young white men and boys, most of them offenders against the prohibition law. What will be the effect on society when these, debased and degraded as they are by the nature of their punishment, are returned to community life, when they become fathers of families that are to be reared amongst us? There is something radically wrong in any law that cannot be enforced except at such tremendous moral cost.

The wrong in the statute is, that is too intemperate, too drastic, that it prohibits where it ought to regulate. Perhaps light wines and beer is the solution. I am not sure of that, but I do believe that I know that the enforcement of the present law is ruining the morals of this nation.

I am so firm a believer in the integrity of public opinion that I am sure that if the prohibition law were not morally wrong public opinion would support it, but public opinion is not supporting it. It has the respect of only a small portion of our citizenship. It is one of the statutes which is daily inculcating widespread disrespect for all law.

Our courts must enforce this law as it is. Every judge is duty-bound and oath-bound to enforce every law, whether in his personal judgment he approves it or not. Nevertheless, the enforcement of law, even though the judge must enforce it, does not in fact create respect for that which the consensus of public opinion condemns.

Now I have spoken boldly as if this were a subject on which we would all agree. I have spoken more freely than otherwise I might have done, because my words are in the nature of the confession of one who has repented. I was one of those who helped to draw and to pass the prohibition law in Georgia. I thought it was right. Cold facts have convinced me to the contrary. I can speak boldly for I am not

embarrassed by any political aspirations or by any allegiance to liquor or to any liquor interest. Certainly I have no financial interest in expressing these views.

I realize that in saying what I have said I have made myself the target for the aspersions of fanatics and of hired propagandists. But I will have no controversy with any one. I admit in advance that I may be wrong. I cheerfully concede to every one the right to disagree with me. But we cannot help the cause of right and truth by dissembling our real opinions on this subject in deference to any mawkish sentimentality; nor by assuming toward it the attitude of the colored parson toward the deceased member of his flock when he said, "Let us all hope Brother Jones has gone where we all know he aint."

Furthermore, if I am wrong the result will be that this statute will live, will commend itself to public opinion, will take its place along with hundreds of other great constructive pieces of legislation that have become firmly fixed in the body of that ancient and natural system of jurisprudence which I have called the law. It will then be respected and obeyed. For in the language of the Scriptures, "if this work be of men, it will come to naught; but if it be of God, ye cannot overthrow it."

The prohibition law, however, if it be an offender, is not the sole offender. Our books are so full of unwise statutes that no man can obey all of them. What a boon it would be if some day the legislature should meet and instead of putting in fifty days in the passage of new laws, should put in the same time in the repealing of old ones.

Furthermore, this growing disrespect for the law is not due altogether either to the law or to the statutes, as they really are. Men at large are not given to making nice discriminations when their liberties are being curtailed—they do not distinguish between the law itself and what is done in the name of the law.

Those charged with the enforcement of the laws ought, at least in their official conduct, to be the most law-abiding.

The theory that it is justifiable to commit crime to detect crime, that it is justifiable to violate a citizen's constitutional rights in order to get proof that he has broken some statute made subordinately to the Constitution; or that it is justifiable for a judge to quit his role of impartial arbiter in order to bring about the conviction of men charged with the violation of some statute, the drastic enforcement of which will add to his political popularity—is a doctrine so fallacious that even hell would blush to own it. When judges become prosecutors, when those charged with upholding and enforcing the law resort to lawlessness in their methods, it engenders in us a sympathy for things which we as good people ought to hate. We ought to hate homicide. Yet how can any lover of law and liberty feel any deep regret when he picks up his morning paper and reads that some officer has been killed by some bootlegger, and then reads further that the officer was committing a plain, palpable violation of the bootlegger's constitutional rights by attempting to search him and his home or to seize him and his automobile on suspicion and without a warrant?

The word "judge" conveys to our minds, or should convey, the picture of a court, of a place where justice is judicially administered with orderliness, presided over by a man set apart for the task, oath-bound against prejudice and partizanship, holding himself above the clamor of the crowd, wielded by nothing save the law and throwing no ounce of his own personal bias to one side or the other of the scales of justice which he holds in his keeping. About such a judge, about such a court, there is dignity and a majesty that commands respect. From the precincts of such a court, from the presence of such a judge, men go away feeling in their hearts the impulse of better citizenship, go away to become more law-abiding.

But there are those who bear the name of judge, and are vested with powers of the office, who are not content to

maintain the position of dignity and disinterestedness I have just described. You have seen them "playing to the grandstand." You have seen them more zealous in the prosecution than the prosecuting attorney himself. You have seen them sweep aside every propriety of the judicial office, in order to inflict punishment upon some man suspected of having committed some crime against which the judge is personally prejudiced, or what is more often the case, some crime against which bellows-lunged fanaticism is at the particular time making a crusade.

There are those who temporarily applaud such a judge and call him righteous. But time soon passes, and even in the breasts of the unthinking who once applauded comes ere long a deep-seated feeling that that judge, and his court, and even the law that he professed to uphold, are unworthy of respect and confidence.

"And it isn't the shame and it isn't the blame  
That stings like a white-hot brand,  
It's coming to know that she never knew why  
And never could understand."

In the long run, our people respect that which is respectable, and this applies to laws and to courts.

I offer no immediate solution, but I am too much of an optimist to leave the subject at this point of apparent pessimism. I believe in God. I believe that His processes of evolution are moving forward and not backward. I do not lose faith in Nature because the ocean heaves under the stress of the storm or because the earth quivers and the mountain tops roar with the eruption of the volcano.

The American people have ever shown wonderful genius in the preservation of their liberties against every attack made upon them. A few decades ago fanaticism found itself in power as the result of the Civil War and imposed African suffrage upon us and sealed it with a constitutional amendment. The unholy words are still written there, but the sober judgment of public opinion in this land of ours has repudiated them; and they are a dead-letter. The pro-

hibition amendment that was foisted upon us while we were in the throes of the late war will find a similar end unless, indeed, it was born of a wisdom which we do not now seem to see.

The American people are long-suffering and patient; they will stand tyranny for a while, but not for long. Whenever enough time has passed for calm public opinion to integrate and gird on its power, every tyranny, be it tyranny of law, or of statute, or of class that holds itself above the law, of labor or of capital or other combination of men, of judge or jury or police or what not, finds itself changed by a super-sovereign that no machine on earth can resist. Our destiny was written on high by a Hand that has the power to see it through.

Even though I see the wicked in power and the people imagining vain things, still I sing with Pippa as she passes,

“God’s in His Heaven,

All’s right with the world.”

I conclude with the immortal words of a great Englishman:

“Of law, there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempt from her power. Both angels and men, and creatures of what condition soever, though each in a different sort and name, yet all, with one uniform consent, admire her as the mother of their peace and joy.”





James G. Davis

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*James E. Davis*

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# THE LIQUIDATION OF FEDERAL CONTROL, AND SOME RESULTS FOLLOWING THE GOV- ERNMENT OPERATION OF RAILROADS.

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ANNUAL ADDRESS BY

JAMES C. DAVIS

DIRECTOR GENERAL OF RAILROADS

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*Mr. President and Gentlemen of the Georgia Bar Association:*

I have entitled this paper "The Liquidation of Federal Control, and some Results Following the Government Operation of Railroads." To an assemblage of lawyers the story of the liquidation of the liabilities of the United States Government as a result of twenty-six months of Federal control and operation of the railroads of this country, is an interesting and expensive sequel to the history of actual Federal operation.

To give the proper perspective, a brief summary of the official acts leading up to the actual taking over by the Government of the lines of transportation seems essential.

By an Act of Congress effective August 29th, 1916, among other things, it was provided:

"The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment,

or for such other purposes connected with the emergency as may be needful or desirable."

Acting under this authority, the President of the United States, by proclamation dated December 26th, 1917, through the then acting Secretary of War, Baker, took the actual possession and assumed control of the following described property:

"Each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States and consisting of railroads and owned or controlled systems of coastwise and inland transportation engaged in general transportation, whether operated by steam or by electric power, including also terminals, terminal companies, and terminal associations, sleeping and parlor cars, private cars and private car lines, elevators, warehouses, telegraph and telephone lines, and all other equipment and combined rail-and-water systems of transportation."

The proclamation further provided:

"The possession, control, operation and utilization of such transportation systems \* \* \* shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Railroads."

I believe this was the greatest single taking over by any government of property used for a specific commercial and transportation purpose that ever occurred in the history of the world. To visualize the situation, appreciate the immensity of the property taken, a brief reference to familiar statistics will be helpful.

The property included some 250,000 miles of main track; 2,500,000 freight cars; 66,000 locomotives; 55,000 passenger cars; 188 large systems, and more than 800 short lines. The tentative valuation of this property devoted to transportation, as fixed by the Interstate Commerce Commission, is in excess of \$18,000,000,000.00. The operation of these systems of transportation employed an army of

nearly 2,000,000 men. The owners of the property, bondholders and stockholders, aggregated nearly 1,500,000 separate individuals and corporations. The gross earnings of the property for the calendar year 1917, just prior to Federal control, were \$4,050,463,579.00. The net railway operating income for that year, after deducting taxes and rents, was \$974,778,937.00.

This transaction may be appropriately described as a renting agreement, whereby the Government agreed to pay an annual rental of over \$900,000,000.00 for a plant valued at \$18,000,000,000.00, and keep this vast property, during the period of the lease, in good repair.

Next to agriculture, the railroad business is the largest in this country, and no government ever faced a more complex or difficult proposition than the attempt to operate this vast industrial plant as a whole.

In the one item of materials and supplies, the book value of same on the 31st of December, 1917, was \$532,528,864.00. This property consisted of every possible item which might be embraced in the ordinary supplies on hand and essential to the operation of a quarter of a million miles of railroad. It was in store-houses, yards, and along the right of way of the 250,000 miles of main track.

No inventory or accounting of this varied, and widely distributed aggregate of property was taken. The standard contract, subsequently entered into between the railroads and the Director General, obligated the Government, at the end of Federal control, to return to each carrier the same amount and kind of property taken over, or account for the shortage at the then current prices.

The work of settling the material and supply account, in and of itself, is a most complicated undertaking, involving not only the determination of the amount and character of the property taken over and returned, but the difference in price between December 31st, 1917, and February 29th, 1920.

In the Act of Congress popularly known as the Transportation Act of 1920, (approved February 28th, 1920), the liquidation of all liabilities growing out of or connected with government operation was entrusted to the President in the following general language:

"The President shall, as soon as practicable after the termination of Federal control, adjust, settle, liquidate, and wind up all matters including compensation, and all questions and disputes of whatsoever nature, arising out of or incident to Federal control."

The authority contained in this language is very broad, and without limitations of any kind or character. An immediate appropriation of \$200,000,000.00 was made for the purpose of carrying on this liquidation, and subsequently, on May 8th, 1920, an additional appropriation of \$300,000,000.00 was made.

The adjustment of all claims arising out of Federal control and operation includes not only the claims of the carriers themselves, but of third persons, and when it is considered that the operation included the entire transportation system of the country, extended over a period of twenty-six months, the complexities of the proposition at first view disclose a most bewildering situation. Personal injury, loss and damage, freight, reparation, and fires are the principal items upon which the claims of the third persons are founded, but the claims that represent the most money and present the greatest difficulty of solution, are those of the carriers themselves, growing out of the use and operation by the Government of their respective properties.

In an ordinary agreement of rent, the tenant usually agrees to return the property to the owner in as good condition as received, "ordinary wear and tear excepted." In the taking over of the railroads the proper maintenance of the property was absolutely essential to anything like efficient operation. The President in his proclamation, Congress in approving his act of taking over the property, and the

standard contract subsequently entered into between the Government and the railroads, all stated and provided that at the end of the Federal control the property would be returned to the respective owners in "substantially as good repair and substantially as complete equipment" as it was on January 1st, 1918, the date of the taking.

The exigencies of railroad operation during a state of war required much interchange and commingling of property belonging to many separate companies. Many terminals were consolidated; some were abandoned; railroads paralleling each other were used and operated as a double track road, and routing traffic one way on a railroad constructed for single track operation has the curious effect of putting the rails out of line, and frequently requires a complete realignment of such roads. There was much substitution of direct hauls for round about ways, which resulted in serious diversion of traffic.

At the commencement of Federal control there were some 2,374,566 freight cars in service. During private control and operation there are ordinarily about 85% of these cars on what are known as the home rails or the rails of the owning company. Prior to Federal control, the exigencies of war required a pooling of freight cars, and this plan was inaugurated before the Government took over the property, and was perfected and continued during the period of Federal control. As a result of this pooling, about 85% of the freight cars were on foreign lines, and these cars, in most instances, were not returned to the owning road until practically a year after the end of Federal control, and the cars, during this period, had been subjected to many months of intensive use.

In making adjustments with the roads, the ordinary items of dispute are material and supplies, maintenance of way and structures, maintenance of equipment, retirement, replacement, and depreciation.

This property was diversified in its character, and was in all sorts and conditions of obsolescence. On every railroad there is continually going on a definite plan of retirement and replacement, especially in the operating equipment.

The most serious dispute between the carriers and the Government, in making final settlement, is over the question of maintaining the property,—maintenance of way and structures and maintenance of equipment.

Early in the period of Federal control, and acting under authority of an Act of Congress, agreements were entered into between the Director General and the individual carriers on forms generally known as the "standard contract," whereby it was sought to define the rights and liabilities of the respective parties during what was at the date of the execution of the contract the indefinite period of Federal control, and it is out of the proper construction of this contract, on the question of maintenance, that the most serious differences have arisen.

The carriers contended that the condition of the property, in the way of maintenance, as of the date it was taken over, December 31st, 1917, and its condition when it was returned, February 29th, 1920, should be determined by what is known as a physical comparison of the property as of the two dates of seizure and surrender; the Railroad Administration contending that by the terms of the standard contract the compliance with the provisions of maintenance was to be determined by what is known as the accounting method; that is, if the Railroad Administration expended or credited to the carriers, on account of maintenance, repairs, renewals, retirement, and depreciation, after making due allowance for the difference in the cost or price of labor and materials as between the test and the Federal control periods, such sums to be equitably distributed as to items, the same amount of money that the carriers expended when the property was under private control, and during the three years from June 30th, 1914, to June 30th, 1917, which is

taken as a test period, then the obligation on the part of the Government in the matter of maintenance would be satisfied.

In this connection, the carriers also made claim for what is known as the inefficiency or ineffectiveness of labor during the war period, contending that, if the accounting method should prevail, then a substantial allowance for this alleged inefficiency should be made.

While in the presentation of the carriers' claims inefficiency of labor is stated in many ways, and by various complex formulas, a simple example of its effect is this:

Section men were paid say \$1.50 per day during the test period. The same labor cost during Federal control \$3.00 per day, and it is conceded the carrier is entitled to the \$3.00 a day which the labor cost during the period of Federal control, but the carrier further says that the \$3.00 a day labor was only 50% as efficient as the \$1.50 labor during private control; therefore, the carrier wants an additional \$1.50, which would entitle it to an aggregate of \$4.50 during the period of Federal control, as against an actual expenditure of \$1.50 during private operation.

These differences in the construction of the contract and the claims growing out of inefficiency of labor aggregated some \$700,000,000.00. After a prolonged dispute, and with some difference of opinion, the contention of the Railroad Administration was confirmed by the Interstate Commerce Commission, and all adjustments so far made by the Railroad Administration have been in accordance with its contention and its construction of the contract.

The claims against the Government arising out of Federal control fall into two classes;

1st. The claims of third persons, generally described as personal injury, loss and damage, fire, reparation, and the like.

These claims are in process of adjustment, under the general supervision of the central office in Washington,



through the agency of the individual carriers. These settlements, in a general way, are being completed upon lines ordinarily followed by the carriers during private control and operation, and very satisfactory progress in this matter is being made.

2nd. The claims of the carriers against the Government for the use of their property, from the time it was taken over until it was released and returned to the owners.

These final settlements are proceeding with gratifying results, and practically without litigation. It is quite remarkable that in the adjustments between the Railroad Administration and the carriers up to this time no controversy has proceeded to the point where the judgment of a Court has been obtained.

Up to May 1st, 1922, claims had been filed by the carriers on final settlement aggregating \$1,011,251,598.42. This represents, exclusive of short lines, about 95.5% of the mileage under Federal control. Up to the same date claims aggregating \$519,798,985.18 had been settled. These settlements represent 61.22% of the aggregate amount of mileage under Federal control. The cash paid out by the Government in making these settlements totals \$146,127-692.55.

If future adjustments proceed upon the same lines as those that have heretofore been made, the final settlements with the carriers for the use of their property should be practically concluded by about July 1st, 1923.

It must be remembered that these final settlements, disposing of claims aggregating more than \$519,000,000.00, represent balances from which have been deducted large payments on account made to the carriers by the Administration during and since the period of Federal control, and also that these balances include all disputed items arising out of the Government's use and possession of the claimants' property. If the payments on account had not been made, the aggregate claims of the carriers that have been

adjusted would have totaled more than \$1,800,000,000.00. The one item of annual compensation for the use of the property is in excess of \$900,000,000.00.

Some idea of the volume of money represented in this adjustment may be appreciated when it is considered that the total debits and credits of the accounts represented in settlements that have been heretofore concluded aggregate \$1,838,308,182.04, and the total aggregate of the debits and credits that will be the subject of final settlement and analysis will exceed \$3,500,000,000.00

There is one class of demands so out of the ordinary and so exceptional in amount as to justify special reference, same being designated as the Minnesota Forest Fire claims.

In October, 1918, a great forest fire occurred in Minnesota. An area of some 1,500 square miles was burned over, and several towns or cities were totally destroyed, notably the Town of Cloquet, with a population of some 10,000 people.

Notwithstanding the fact that there were many fires originating in the burned over section entirely independent of railroad origin, and also notwithstanding the fact that during the period of the conflagration a hurricane was blowing at the rate of some sixty miles an hour, the Courts of Minnesota have held that if, as a matter of fact, it can be shown that a fire set out by a railroad under Federal control materially contributed to the conflagration, the Railroad Administration is liable. In the trial of some test cases, the jury found against the Railroad Administration. There are pending in Minnesota some twelve to fourteen thousand cases, asking damages in excess of \$25,000,000.00.

It has finally been decided by the Railroad Administration that it will be necessary, because of the holdings of the Minnesota Courts, to adjust these claims, and same are now in process of adjustment, being settled at from twenty-five to fifty cents on the dollar.

Until the final liquidation has been completed, it will be impossible to state with accuracy the amount of the loss to the Government growing out of or connected with the Federal control of the railroads. In making an estimate covering the total cost of Federal control to the Government, there must be included the amounts paid by the Government to the carriers for what is known as the six months' guaranty period, being the six months immediately following Federal control, and before the Interstate Commerce Commission had had an opportunity, under the provisions of the Transportation Act, to make a re-adjustment of rates, and in addition, the amount paid out by the Government to sundry short lines of railroad, covering their deficit in operation during that portion of the period of Federal control when these short lines were not operated by the Government.

I believe it entirely safe to say that this aggregate loss, including all of the items above suggested, will run from \$1,800,000,000.00 to \$2,000,000,000.00, the items of loss referred to being roughly divided as follows: \$1,200,000,000.00 as the result of twenty-six months of Federal control, and \$600,000,000.00 to \$800,000,000.00 liabilities paid because of the provisions covering the "guaranty period," and the allowance provided for the short line railroads showing a deficit during Federal control.

There is a popular impression that the road bed, structures, and equipment of the railroads were turned back to the owners at the end of Federal control in a much worse physical condition than when they were received. The accounts of the Railroad Administration do not bear out this contention, either as to the number of units in service or the comparative amount of money expended.

In the maintenance of way of the Class I roads, during the twenty-six months of the test period corresponding to the twenty-six months of Federal control, the carriers expended \$859,393,403.00, or \$3,726.00 per mile of road. During the twenty-six months of Federal control the Gov-

ernment expended for the same purpose, and on the same property \$1,533,615,734.00, or \$6,616.00 per mile of road.

In the matter of motive power the total number of locomotives in service December 31st, 1917, was 61,890. On February 29th, 1920, at the end of Federal control, the number of locomotives in service was 64,983, or an increase of 3,093 units.

From the best available information, during twenty-six months of the test period the carriers expended in the maintenance of motive power \$422,244,108.00. During the period of Federal control the Government expended for the same purpose \$996,877,227.00.

The total number of locomotives out of service for repairs requiring more than twenty-four hours, on January 4th, 1918, was 18.5%. On February 29th, 1920, at the end of Federal control the total percentage of locomotives requiring the same character of repairs was only 17.8%.

There is much greater difficulty in comparing the condition of the freight car equipment as between the commencement and the end of Federal control, largely because of the fact that in the consolidation, from an operating standpoint, of all the transportation lines the freight cars were pooled, and a very large per cent of the freight equipment was continuously during the period of Federal control on foreign lines.

The total number of freight cars on line January 1st, 1918, amounted to 2,374,566. The total number of freight cars on line February 28th, 1920, amounted to 2,486,507. This shows an increase in the number of freight cars, as between the beginning and the end of Federal control, of 111,941 cars.

During the twenty-six months of the test period corresponding to the twenty-six months of Federal control the total expenditure by the carriers for freight car maintenance was \$391,327,170.00, or an average of \$79.38 per car per

annum. The total expenditure for freight car maintenance by the Government during the period of Federal control was \$907,227,045.00, or an average of \$178.40 per car per annum.

The records indicate that at the commencement of Federal control the percentage of bad cars was 5.3, amounting to some 126,650 cars. At the end of Federal control the same records indicate 5.7% of bad order cars, amounting to 143,425.

I am not unmindful of the marked difference in the price or cost of labor and materials as between the test period and the period of Federal control. I am fully aware of the difficulty during the time of Federal control to at all times procure efficient labor and proper materials. I also appreciate the insistent demands for the transportation of men and war materials, entailing in many instances unusual requirements from the freight equipment, but I do submit that the expenditure by the Government of these vast sums of money shows a conscientious, good faith effort to maintain and keep the carriers' property up to the same standards of efficiency as when the property was taken over.

There are two other substantial reasons why the maintenance of the railroad properties was sustained to as high a degree of efficiency as was humanly possible. The money expended in maintenance was all paid out under the immediate direction of Federal Managers who, in almost every instance, were former controlling corporate officials, vitally interested in the property in their charge, and who in most instances resumed their corporate positions at the end of Federal control. No suggestion has ever been made that these men, highly competent and personally interested in the welfare of the property under their supervision, did not obtain the best and most efficient result from these vast expenditures.

Again, immediately at the close of Federal control the railroads moved an unusual amount of gross tonnage. This movement was executed with an expedition that reflected great credit upon the efficiency of private operation. A leading railroad executive, in describing this performance in 1920, said:

"We actually moved 9,000,000,000 ton-miles more than the Director General moved in 1918, which was the previous biggest year, and 53,000,000,000 ton-miles more than he moved in 1919, \* \* \* \* and 25,000,000 more passenger train miles in 1920 than in 1919. \* \* \* \* The tons per loaded car, at 31.2 tons per car in December, was the biggest record ever made, and the miles per car per day were also larger than ever made before, with one exception, and that was in May, 1917, under private control."

Now, it is quite evident that, if the motive power was in a run down condition, and the freight equipment was generally in bad order, efficient service of this character could not have been obtained immediately after the termination of Federal control.

I am not claiming that the railroad properties did not seriously suffer as the result of a combination of Federal control and war conditions, but this injury in my judgment, was economic rather than physical. The serious element of injury to the railroad properties, as the result of Federal control, is found in the fact that when returned to their owners the properties were being operated at a deficit, this as the result of a policy of the Railroad Administration that at least a part of the increased cost of transportation should be borne by the general public as a war expense.

I cannot at this time enter into the merits of this policy. I do not offer criticism of same. I am only suggesting its effect upon the economic condition of the railroads at the time the property was returned to its owners.

Again, during Federal control working rules and conditions were changed; labor was much more thoroughly organ-

ized; the general rule of an eight hour day more effectively enforced, and standardized wage contracts were entered into that had not existed prior to Federal control, and many other operating changes were effected without any opportunity on the part of the owners of the properties to have a voice in same, or be heard in regard to their merits.

One example illustrates the character of the increase in operating expenses. In 1917 the average earnings per annum of each employe were \$1,003.01, and a large number of employees at that time were giving ten hours per day service. In 1920 the average earnings were \$1,819.71, and the average hours of service a small fraction over eight.

Please understand I am not assailing the justness of these advances at the time they were made. The radical changes in living conditions and the abnormal conditions of war perhaps justified them. I am calling attention to the record and suggesting that these increases were made at a time when the carriers had no voice in the matter.

Again, legislation radically restricting the power of the corporations over their property, and especially over the vital items of rates and wages, had been enacted in the Transportation Act, and, when the property was returned to the owners at the end of Federal control, the corporations were confronted by the very unpopular and very difficult task of asking for a raise in rates and a reduction in wages. It is these economic rather than physical conditions that have disturbed the solvent operation of the carriers, and placed upon them very unusual burdens as the result of war conditions, and these are damages for which the law provides no compensation.

The restoration and rehabilitation of the railroads is one of the great and controlling propositions facing this country in the effort to restore normal conditions, as the result of the great war. The general property of every country is measured by the efficiency of its system of transportation.

The growth and developement of the railroad industry in this country is one of surpassing interest. This wonderful system has come into existence within the memory of men now living.

The experimental stage of railroad building was from 1830 to 1850. From 1850 to 1875 or 1880 the science of railroad building was rapidly developed. During this period railroads were generally recognized as private property, and owned and operated as such. The building of new lines and extensions was aided and encouraged by Federal and State Governments, counties and cities, and every possible form of public and private assistance, and, as a result, there was a marvelous developement in this country, especially in the agricultural districts of the middle and far west.

In 1876 the United States Supreme Court announced the rule that resulted in the Federal and State Governments exercising supervision of rates and charges. In 1887 Congress enacted the first formal Interstate Act, thereby assuming a definite control of carriers engaged in interstate commerce, and from that date down to the time of Federal control of railroads, December 31st, 1917, there was a perfect flood of supervisory state and national legislation.

In the matter of rates and expenses of operation there was a continuing tendency on the part of all regulating and legislative bodies to increase the cost of operation and reduce the compensation for freight and passenger service. A notable example of this was the arbitrary adoption by a great many State Legislatures of a two cent passenger fare, in force over all lines of road, without reference to the question of reasonableness, and made effective in many jurisdictions where the sparse population made the return to the carriers entirely inadequate, and caused continued deficits in passenger operation.

For some years economies in operation, such as reduced grades and curves, and the use of larger cars and heavier



locomotives, met these increased operating expenses and reduced rates, but by the end of 1917 the railroads were facing what seemed to be a desperate struggle for continued solvency.

At the end of Federal control, Congress, after great deliberation, enacted what is known as the Transportation Act of 1920. This is the only railroad legislation which in a substantial way contains provisions looking to the protection of the owners of the property. All former legislation had for its object the regulation of rates and operation in the interest of either the employees or the public.

In addition to greatly increased power over rates and operating conditions, the Transportation Act creates a national "Railroad Labor Board." This is given general authority to hear "and with diligence decide" disputes growing out of rules or working conditions, and is further authorized to hear "and with diligence decide" all disputes with reference to the wages and salaries of employees and subordinate officials.

The Labor Board has construed its power under this act to extend to the control of all changes in wages, and that no changes in existing contracts or rules can be made by the individual carriers under its jurisdiction except upon approval of the Board.

As a result of this legislation in these vital matters of rates and wages the Government has definitely taken from the carriers the power and initiative to control either the income or the outgo in the operation of these properties.

In this present legislative situation one of the most important if not the most important proposition facing the American people in the struggle to return to normal conditions is the definite plan under which the railroad transportation of this country will be permanently conducted.

As has been heretofore stated, perhaps the greatest commercial accomplishment of the last century was the construc-

tion and the subsequent operation of the American system of railroad transportation, which up to the period of Federal control, was by far, in the way of satisfactory service and low charges, the most efficient transportation system in the world. This result was not attained without much that was subject to criticism on the part of corporate organizers and managers, but, making due allowance for all that was undesirable, the progressive advance of railroad transportation was a most notable achievement.

Whether we like or dislike these great corporate organizations, they are absolutely essential to the prosperity and progress of our land; they are the dray horses of the nation, and you cannot beat and starve your horse and have him haul the load.

The Transportation Act of 1920 presents a definite plan for the solution of the railroad problem. No prior railway legislation was preceded by a more complete and detailed investigation by both Houses, aided by the Interstate Commerce Commission and independent investigation. Competent men in both branches of Congress, controlling in the construction of this legislation, had given years of study to the transportation problem in all of its phases.

By the terms of this act, in the matter of rates and operation, the Interstate Commerce Commission is given much new and untried authority. In addition to control over rates, interstate and to some extent local, the Commission is authorized and empowered to provide pooling of earnings, distribution of freight equipment, consolidation of companies, joint use of terminals, construction of new lines, abandonment of lines improvidently constructed, or failing to receive sufficient public patronage to justify operation, and the control of the issuance of new securities, in the form of stock and bonds.

As has heretofore been suggested, a new national tribunal, known as the Railroad Labor Board, was created, the

purpose of the creation of this Board being to prevent in the future railroad labor strikes, by establishing a fair tribunal to settle labor difficulties, and thus avoid those controversies which in the past have brought so much economic waste to the country, and unspeakable distress, suffering, and financial loss to the great body of our people who are innocent of active part in the controversy and powerless to defend themselves against the disastrous effects of same.

The ideal transportation system is to furnish prompt, adequate and efficient service for the public, at rates that are reasonable and will permit free exchange of commodities essential to prosperous commercial life; pay to all employees sufficient compensation to enable them to live and rear their families under fair and civilized standards of living, and to return to the owners of the property a just and fair compensation on the value of the property engaged in the service, based upon efficient and economical management. All of these ends the Transportation Act attempts to provide for.

Up to this time there has been no fair trial, under anything like normal conditions, of the provisions of this recent legislation. During the calendar year ending December 31st, 1920, the railroads were operated under three distinct situations: January and February under Federal control; for the six months ending August 31st under what is termed the "guaranty period" provided for in the Transportation Act, where it was recognized that the rates in force during Federal control were not sufficient to make a fair return on the property used in transportation; and during the last four months of the year 1920 the carriers were under private control, but burdened by many rules and working conditions the outgrowth of a state of war.

During the year 1921, while conditions improved, they were not, so far as the volume of transportation is concerned, in any wise normal. The net earnings of the rail-

roads during this period were but 3.3% upon the value of their property as fixed by the Interstate Commerce Commission. While conditions are gradually improving, up to this time in the present year there has not been the ordinary volume of tonnage that the railroads in normal times should receive.

In this situation, is it not the part not only of statesmanship but wise economic judgment to give this law a fair trial, under reasonably normal conditions, which, if not here, we all believe are rapidly approaching, and give the public tribunals which have been placed in charge of the affairs of the Transportation Companies,—the Interstate Commerce Commission and the Railroad Labor Board—an opportunity, in the exercise of their new and additional powers, to put this great and controlling national industry in a position where it may reasonably respond to and perform its public responsibilities?

Private ownership and operation of railroads is now on trial. It is possibly making its last stand. The conservative mind shrinks from the thought of public ownership of this great industry, so essential to a prosperous national existence. If railroad ownership and operation is thrown into the maelstrom of politics all of the incentive to the success of privately owned property would cease, and promotion in service would depend upon political influence and pull, rather than the faithful performance of duty and controlling ability. No greater mistake, in my judgment, could possibly be made than to have the national government permanently take over and operate the great railroad transportation systems of this land.

In the world war the Transportation Companies bore an important part. It was the efficiency of the railroads of America that carried to seaboard the men, the food, the clothes, and the munitions of war that kept the allied armies in the field. It was a great work, willingly performed by the men in charge, who were patriotic and prompt in their

response to every demand made upon them, and this essential industry in our national organization should receive in this period of rehabilitation just and fair treatment.

A great English statesman recently said that civilization has "struck its tents and is on the march". Where it is going we do not know. The United States is faced with many and far reaching problems, the direct heritage of an unprecedented war. Their solution calls for the disinterested efforts of the best minds from every part of the land. It is a time for statesmanship rather than politics. We must remember that it is much easier to tear down than it is to build up; much easier to create debts than it is to pay them.

It is a most difficult problem to require the great body of the people to give up the liberties and license prevalent during the period of the war, with all of its attendant extravagances, and return to the moderate paths of peace, practicing those ordinary economics which during normal times must prevail. After the profound disorganization of our social and business life, with the civilization not only of this country but of the world seemingly at one time on the verge of destruction, the road to normal conditions is hard, tedious, and painful and, as good Americans, without regard to politics or geographical location, we should stand together for those principles that are right, and, if we are steadfast and have courage, the right will prevail.

## HONORABLE JOHN ANSELM JONES—FATHER OF MODERN REFORM PROCEDURE.

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A SKETCH BY

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Hon. John Anselm Jones was the son of Abram Jones and his wife, Sarah Bugg, daughter of Sherwood Bugg, and a descendant of Major John Jones, who came to Savannah from his native city of Charleston and settled in St. John's Parish, now Liberty County. Abram Jones was a lieutenant in the Continental Army, was one of the seven Jones brothers who fought in the Revolutionary War, one of whom fell in the battle of Savannah. The subject of this sketch married a Miss Jenkins of Greene County, a descendant of George Walton, one of the signers of the Declaration of Independence. He settled at Augusta and subsequently moved to Milledgeville, the then capital of the State. He reared to manhood five sons, Thomas, Seaborn, Hamilton, Robert and John. The last was treasurer of the State during the War Between the States. He won and deserved the name of "Honest John Jones." After the death of his wife the subject of this sketch moved to Cherokee, Georgia, and settled at Van Wert, the county seat of Paulding County. After the war he moved to Rockmart in Polk County where he resided until his death, August 25th, 1880.

White in his Statistics of Georgia says: "Whatever may be the character of party differences, we believe it may be affirmed without fear of contradiction that Mr. Jones is a

warm-hearted Georgian, an able lawyer and an honest man." One who knew him intimately says: "I have associated with big men on two continents, and I declare he was the most original man I ever knew." Judge J. W. Underwood in his "Memories of the North Georgia Bar" stated: "That John Jones was the greatest wit in Georgia and the most fearless man. He was the most independent man in my knowledge, a man of great learning, acquainted with government and law as a science. Honest and frank in all his views to bluntness, he was entirely indifferent and defiant of the opinion and beliefs of others, could not be swerved by tyrants or public opinion from his own convictions."

In December 1847, the bill proposed by Hon. John A. Jones, then a member of The General Assembly from Paulding County, to simplify and curtail pleadings was enacted into law. The "short forms" of pleadings known as the "Jack Jones Forms" then were legalized.

In the case of *Van Buren v. Webster* (12 Ga. 615, Jan. 1853), Chief Justice Lumpkin says: "I shall never fail to regret that the great Judiciary Act of 1799 had not remained intact, the forerunner and the model of all modern law reform, not as it was administered by the courts of the State, but in the spirit in which it was conceived by the authors. As Minerva, the Goddess of Wisdom, was generated full grown from the brain of Jupiter, so I revere this statute as the embodiment and personification of judicial (sic) perfection. It is a matchless miracle of human sagacity."

Again in the case of *Tuggle v. Wilkerson* (17 Ga. 91, Jan. 1855), the same learned judge says: "This complaint is well brought under the "Jones Forms." So far from construing the act strictly, it should be liberally interpreted, intended as it was to facilitate the recovery provided by law for the redress of wrongs. And it is a feather in the cap of its author that the Commissioners sent to this country from England to look into the mysteries of American Law Re-

form, have transmitted a copy of this act home and it is now upon the Statute Book of the British Parliament, as the law of the realm. From the first settlement of this country, 1732, certainly from the adoption of the first Constitution in 1777, our people have exerted their ingenuity to the utmost to simplify legal proceedings. When the Act of 1799 was passed, it was fondly supposed, no doubt, that this darling object had been accomplished. But the judges of that day, unable to throw off the shackles of their professional education, instead of construing the act itself, as they should have done, read and enforced it in the light of British books, adhering as pertinaciously as ever to the forms prescribed by the British Courts. Then commenced another struggle. Finally in 1847 a heavy blow was aimed at fictitious forms. It is needless to mince matters any longer, the age of quirks and quibbles is past in Georgia. Henceforth form is nothing, substance is everything."

The "Jack Jones Forms" were embodied into the New York Code of Procedure some fifty years ago, and of course credited to England. Perhaps one-half of the States of the Union have adopted the New York Code in one or another form, calling it "Code Pleading" and in Georgia they were law and practice long before the New York Code was framed. Thus the "Jack Jones Forms" prevail in more than half the States of the Union and throughout the world-broad Empire of Britain. They are not mere short forms. They are adaptations of the principles of pleading to modern conditions. They present to the court and jury the legal effect of the facts of the case, without repetition, circumlocution or verbosity. They are a distinct addition to the science of pleading. Their author had the vision and the ability to realize his own views. He may truly be called the father of modern reform procedure.

It is eminently fit that an effort be made to rescue from oblivion the name and fame of one who deserves the admiration and gratitude of every lawyer and layman wherever the Anglican System of administering justice prevails.



## **BUSINESS METHODS IN A LAWYER'S OFFICE.**

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**PAPER BY  
H. F. LAWSON,  
OF HAWKINSVILLE**

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In recent years we have become accustomed to hear many lawyers deplore the change that is coming over the practice of law. It is claimed that, particularly in the larger centers, the practice is becoming a business rather than a profession. Not so long ago there was attempted a revival of interest in the ethics of the bar and recently a movement was begun in this Association to hang in every court house a copy of the code which should govern our professional conduct. It was felt that the general public as well as lawyers needed to be continually reminded that the practice of law involved more than the successful trial of cases, and more than the giving and acting upon shrewd counsel.

This movement took on in some quarters the appearance of a renaissance. Many states passed laws prohibiting the practice of law by corporations and individuals who were not lawyers. The encroachment of the trust companies upon the ancient rights and duties of our profession, the multiplication of collection agencies, the conduct by the metropolitan press of a daily column undertaking to furnish free legal advice, the organizations of business men which sought to handle the adjustment of claims both in and out of court frequently without the employment or benefit of legal counsel, and the occurrence of many similar phenomena

induced a defensive activity on the part of the profession and caused a vigorous protest by many thoughtful laymen. The bar and the public alike were urged to inform themselves concerning these evil tendencies and to unite for extermination. But as a rather illogical corollary to this view we were told that because of the demands of business upon the profession growing out of the volume of legal work which the present complicated state of existence has brought about, there is an urgent need that law matters should be handled with less time consuming formality and more and more in accordance with the ritual of the purely commercial world.

And again there are many who hold that lawyers should never permit themselves to forget that in the ultimate the practice of law is not a business, should never be allowed to degenerate into a business, but is now, has always been, and should always be a profession.

The changes have been rung upon the notion that lawyers are priests in the temple of justice. So now for some time we have been undertaking so to steer our craft that we shall avoid the rocks of commercialism on the one hand and the stagnant shoals of the purely professional on the other.

Our secretary has advised me that I am to approach this subject from the viewpoint of the small town lawyer and the one man law office. It is well that he did so, because my experience in the practice has been wholly confined to country towns and agricultural communities. Therefore in all that I may say I shall deal wholly with the problems which confront the lawyer of my class. I know nothing of large law offices, with their commanding generals, their regiments of salaried assistants, their companies of stenographers, their squads of lay employees, their drum majors of office boys, their liason officers presiding over interoffice telephone systems, their batteries of typewriters and their service of supplies which furnishes everything

from a postage stamp to the reports of the U. S. Supreme Court and all that lies between.

Likewise I am equally as ignorant of the city lawyer's reactions to the undermining forces of commercialism of which I spoke in the beginning; but I believe that I am an expert regarding the small town practitioner's response to the overpowering perfume of the lotus flower which blooms perennially in the swamps and marshes of the wholly professional.

If the small town lawyer errs, as he undoubtedly does, it is probably because he regards his work as so esoteric that his negligent attitude toward it will because of its inherent mysteries escape intelligent criticism. He fails to approach it as a business whose demands are always urgent and at the same time quite simple.

The complaint that the lawyer of my class will not attend to his business in a systematic way is too frequently justified by the facts, and too wholly unwarranted by the opportunities that he has to attend to business.

Our law schools turn out the young lawyer with a theoretical knowledge of most things pertaining to his profession, but give him no instruction concerning how he can most easily and most efficiently attend to the business he hopes to get.

It has often occurred to me that from the same platform on which are delivered lectures on legal ethics there should also be given advice on how to keep up with and efficiently attend to professional work. It seems to me that one is the complement of the other.

The lawyer of the past generation frequently filed his papers in a pigeon hole or a barrel. I have known one who actually did use an empty flour barrel in which he kept all of his office papers. As an apology for that kind of filing system he was accustomed to say that while he might not be able at any moment to lay his hand on any particular paper, that he always knew where that paper was—it was somewhere in that barrel.

Business methods, or systems, in conducting a law office can of course have but one purpose—that the greatest amount of work shall be most efficiently done with the least expenditure of energy. Lawyer's work is a lawyer's business and in many respects it does not differ from the business of a banker, railroad man, merchant or any one else.

The work is there, the work must be done. The sole question is how that work can be done in the most efficient way.

Probably the old-fashioned lawyer and the old-fashioned law office do not now exist; but there are lawyers and law offices even in this day of filing systems, typewriters and the like whose business is conducted in a very slipshod fashion and as a result the returns from whose business are not nearly so remunerative and the result of whose work is not nearly so satisfactory as they would be if different methods were employed. I presume that in cities where keenness of competition compels closer attention to business and more efficient work, one cannot find as in many small towns, law offices conducted in a very careless fashion.

But a large number of law offices in country towns are never swept; in them there are desks that are piled many inches thick with dust, papers, pamphlets, letters and newspapers; and likewise there are also in such towns many lawyers whose incomes would be materially increased if they would bring themselves to the effort of a general cleanup and a systematic arrangement of their affairs. In fact there is no reason or excuse that can be made for a law office anywhere in which the business entrusted is negligently handled and the important papers and documents relating to that business are suffered to be scattered over all the room so that neither the lawyer nor anyone else can make heads or tails of what is visible.

The personal opinion of the writer is that there is not a town in Georgia in which a very comfortable living cannot be made in the practice of law, if, in addition to honesty

and fidelity, there is put in constant motion fifty per cent of the ordinary energy of the average man and the business conducted in a reasonably systematic manner.

As I have already said, I approach this subject from the viewpoint of the one-man law office. The views herein expressed and the methods herein discussed are peculiar to that office.

I do not go to the extent of suggesting that any one else adopt the system which I employ; but because I know nothing of system in other law offices, and, in fact, have had no experience with any system except my own, I shall undertake to discuss nothing else in this paper except the conduct of business in my own office. This paper is therefore unpardonably personal, and as an apology for writing it and reading it to you I urge in my behalf that I always endeavor to do what the President, Secretary and Executive Committee of this Association tell me to do; upon their broad and ample shoulders must fall the mantle of your displeasure and behind them I shall hide with all proper embarrassment when I have finished.

#### THE SELECTION OF A LAW OFFICE.

Selecting a law office is always a simple and a difficult matter in a country town. It is a simple matter because the field of choice is usually limited; it is a difficult matter because it is frequently hard to adapt the best you can get to your needs.

First of all a law office should be well lighted and therefore a northern exposure is much to be desired. Most of us depend upon our eyesight to make a living; that eyesight should be protected and guarded in every way possible.

If the office is located reasonably near the center of business so much better, but I would, personally, sacrifice many other advantages to good lighting.

The amount of office space needed of course largely depends on the amount of business transacted. My own office consists of two rooms, each having a large closet with the

use of one end of a hall for storage purposes. We try to keep the floors swept and to hold dust to a minimum. There are suitably located lights for night work and there are electric fans for summer time; and in my particular office there is steam heat, or I should more truthfully say that in my particular office there is steam heat—sometimes.

The front room is used by my assistant, a younger lawyer and the stenographer. In it also are placed filing cases for live business, the office safe and a part of the office library; in the large closet adjoining are stored the office supplies arranged on shelves.

I occupy the other room, with the greater part of the library and a flat-top desk, which contains nothing at any time except the matters on which I am at work, the Code of Georgia, Shepard's Citations, my own diary, the more recent copies of the Southeastern Reporter and a basket in which is kept matters that are in suspense.

#### THE STENOGRAPHER AND HER DUTIES.

In addition to taking dictation the stenographer keeps up with the files, and is responsible for all papers that go into them. I make it a point never to touch a paper unless it be in the file in which it belongs for the reason that some one must be finally responsible for papers. I rarely take a file from the case myself, not because I am too proud or too lazy to do so, but because it keeps the responsibility of these papers always on the stenographer, who cannot say that I was the last one to have a certain paper, for she was the last one to handle it.

As a result of this I can say, I believe with pardonable pride, that I have never lost a paper.

The stenographer also keeps up with the office supplies and their replenishment.

#### THE YOUNG LAWYER AND HIS DUTIES.

In the first place he does what he is told to do. He handles most of the correspondence arising out of ordinary

the justice courts and tries most of the cases therein and commercial law business, examines records, attends most of assists in the trial of cases in the higher courts.

#### THE FILING SYSTEM.

The filing of all papers relating to the several kinds of business is done according to one general scheme, and for it the ordinary vertical filing system is used, with either the common manilla folder or an expanding envelope of the same size as the folder, as the papers to be cared for may demand.

Whether a note is received for collection, a suit is to be brought or defended, a title to be investigated, a written opinion is required, or some special matter is to be adjusted, all are put into a folder and placed in the case in alphabetical order under the last name on the tab. These folders are prepared by the stenographer who typewrites a slip describing the business and pastes it on the tab.

Into that folder goes everything relating to the matter except valuable documents which are kept in the safe in envelopes indicating to what file they belong and showing what is contained therein. These envelopes are also filed alphabetically according to the last name. The file shows that valuable papers are in the safe.

On the file itself we write memoranda as required; for example if there are a number of claims against the same defendant and a form letter is sent out, we keep only one copy, filing that in one of the folders, but noting on all the others where it may be found and the date of it.

We keep also loose leaf dockets which are arbitrarily designated collection, suit and judgment dockets. The sheets therein are arranged alphabetically according to the last name.

If the business comes in as a collection, this loose leaf contains a statement of the source from which received with address, the name of the plaintiff and defendant with address. If suit is brought on the collection, the court and

the term to which brought is shown, and the sheet is lifted from the collection docket and placed in the proper suit docket. On this sheet is written the general history and progress of the case. If the suit eventuates in a judgment the same sheet is taken from the suit docket and placed in the judgment docket. On the sheet is then written whatever further information seems pertinent, such as the state of the defendant's property, his change of residence and the like. As remittances are made, entries of the amount and date are shown.

On these sheets also are shown fees charged and collected, costs advanced, expenses incurred. All entries are made by the stenographer or assistant, under instruction.

In the suit dockets and judgment dockets are placed only sheets relating to suits and judgments, but the collection docket contains not only sheets relating to collections, but all other matters which are active.

We use the loose leaf dockets because they are so easily capable of expansion, and because it is easy to keep them free of closed matters.

I find that in the course of a very short time I can by running through these dockets, keep myself advised generally concerning every piece of business in the office.

When a matter is closed, the file contains every paper and document relating to it, including remittance checks and the loose leaf sheet. The closed file is placed in a transfer case and a serial number is given it; the file is entered under both names in an index which the serial number shows. The transfer cases show the numbers contained, and thus in a very few moments by referring to the closed file index we are able to locate any closed file.

I use the loose leaf dockets in preference to the card index because I find that the loose leaf docket is in fact a card index and can and does contain much more information than it is possible to put on a card. The loose leaf docket con-



tains all the information that appears on a card index or a set of books.

If it should be urged that there is no reason for duplicating work by entering information on the loose leaf sheet that also appears in the file, my answer is that the time consumed in running through a number of files to find the exact status of a given case is much less than that of glancing at a loose leaf sheet. My stenographer informs me that the making of these entries is not laborious, and that if she makes them daily as they are dictated to her or from information that is apparent from general dictation, comparatively little of her time is taken up.

In handling collections the loose leaf docket provides a simple method of keeping closely up with that class of business. By daily running through the dockets I learn quickly the work to be done on any given claim on any given day. Every sheet stands for an unfinished piece of business, and shows the status of it. The diary on my desk, or that of the assistant, records the promises of the debtor to pay in the future. So by a comparison of the diary and the docket daily the requirements of each collection are kept up with.

As the time for filing suits approaches, of which the diary reminds us, we appeal to the collection docket and quickly are able to select the claims to be sued. The sheet shows the date on which a notice to bind for attorney's fees was given; the diary shows when the notice expired.

In keeping up with suits, practically the same course is pursued. The sheet in the suit docket represents a case in court and that sheet contains a detailed history of the case. For instance the sheet shows that a notice to take testimony was served on a given day; the file contains a copy of the notice, the diary shows when the notice expired.

When the case comes up for trial by referring to the docket sheet I know that I have served a notice to produce, we will say, and I am reminded that I ought not to announce ready until the other side has responded. Where, as in my

case, there is but one of me, and I am called upon to try, frequently without assistance of any sort, one suit after another for several days continuously, I find that essential information quickly accessible is a great help. And likewise, I have found it not burdensome after a day in court, when I have tried four or five cases, to go back to the office and dictate to the stenographer all that happened in such cases. She enters on the docket and diary the information I give.

As an example again, if exceptions *pendente* are to be filed an entry for some convenient day ahead is made on the diary, and when those exceptions are drawn and filed, the fact goes on the docket; so when the case goes up, as in my practice they all too frequently do, the docket tells me that I must agonize over how to make the assignment of error—whether upon the exceptions *pendente* themselves—or upon the errors assigned therein. Praise be, however, the Supreme Court has recently settled that question.

Matters in the court of ordinary are handled in the same way. We show on the docket sheet the filing of the petition and a statement of every step taken. The entries in the diary remind me of when the next work should be done.

Uncollected judgments are shown in the judgment docket, as I have previously suggested. Thus all the uncollected judgments are together where they can be quickly and easily found.

#### ENGAGEMENTS.

Engagements of all kinds appear of course on the diary, and by engagements I mean terms of court, sales days, future work of any sort to be done.

Office practice, such as is not included in any of the classes already mentioned, is handled somewhat after this fashion: If the work is done for a regular client and is of sufficient importance to require the charge of a fee other than that covered by a general retainer a special file and loose leaf sheet are prepared, and it takes the same course

as any other business. If it is done for a client to whom we have generally hired ourselves out, and is covered by the retainer, the papers relating to it are kept in the file of that client's business.

If it is of a simple nature and of no particular importance and is done for some one not a regular client, no file is made and no copies are kept.

But if the work is of importance, such as giving an opinion, the examination of a title, the drafting of an important contract, the drawing of a will, a file is made, copies are kept, a sheet is prepared, even though the transfer of the whole to closed files may be done at the close of the day on which the work was done. But in no event is the file removed from the active business, nor the sheet taken from the docket until the fee is paid. A monthly reference to the docket for the purpose of keeping up with such matters, and in the hope that therein lies the possibility of meeting monthly bills will serve to keep up with that class of business.

Matters in suspense, such as unanswered letters because of insufficient information, are kept in a basket on my desk, and of course there is a constant fight to keep that basket empty.

Much that I have mentioned is elementary and you will please understand that I am embarrassed to speak of it.

Details destroy all of us. They should be left to competent trained help. A stenographer who cannot take and transcribe accurately has no place in any lawyer's office. An assistant who is afflicted with any of the "itises" should be shown the door.

Forms should be used wherever possible. By forms I mean not only those to be found in so called form books, but that every lawyer should develop his own forms according to the demands of his practice. This applies to everything from ordinary correspondence to the most intricate work. Haphazard drafting of documents is to be condemned. There should be a settled formula for most

work. A reduction of the general work to form involves a careful study of the form to be used, first from the standpoint of its technical correctness, and next from the standpoint of economical and clear verbiage.

The daily work should just as far as possible be done according to a prearranged schedule. Please do not smile. No one knows, I believe, any better than I do how impossible it sometimes is to follow any given plan. A country lawyer's day is made up more than that of any other man of tears, laughter, disappointments, disarrangements and drudgery. Like all the rest of my kind I have seated myself at my desk on which lay a perfectly arranged disposition of my day's work, and have never once even so much as touched any of it. But there are many days when life flows in its even tenor, and those are the times when not only is the schedule followed out, but much else done besides.

The value of the schedule lies not so much in being able to carry it out just as you hope to do, but in having constantly before you in orderly form what you must do, so that when the times come to make a decision as to what you should do next, mistakes, inadvertences and oversights will be reduced to a minimum.

It, of course, goes without saying that in a one man law office, all really important work is done by one man. There are times when he wishes he were a dozen men, just as there are times when his greatest desire is that there were not any of him at all. Nevertheless, he is responsible for every job; with him there is no opportunity to play the game of passing the buck even to his own conscience. I do not know how it is in a large office; but I feel reasonably sure it must be grand and glorious. But since this responsibility is always on him, it behooves him to know at all times just how his work stands and he owes it to his clients to keep that work in such shape that should he be called away temporarily or permanently, his successor can easily and quickly take hold and carry on. Therefore I believe in the schedule.

Personally I have found such work a great time saver, as well as affording an opportunity now and then to bluff a client into believing that I really know some law.

#### THE LIBRARY.

A country lawyer's library should be as small as his professional conscience will permit. There are so many opportunities and temptations for him to increase it beyond his means that I am of the opinion that in the accumulation of law books it is best to leave the entire subject to the dictates of his higher and better self.

He should, however, having once gotten possession of them and having promised to pay for them, never lend them, for as Sir Walter Scott observed many years ago, while most people are poor mathematicians they are good book-keepers.

#### ACCOUNTING IN A LAWYER'S OFFICE

It is too true that most of us, no matter how good lawyers we may be, are lamentably poor business men. There is much work we do for which we never get paid, and just as often as not because we have no record of it after it has been done.

In my case, again asking your indulgence for the necessity of being personal, I use this system:

A blotter in which are entered fees charged, and a single entry ledger is posted by the stenographer at more or less regular intervals during the month. She also sends out the bills.

A cash book in which are entered fees collected and the office expense.

A record of advances made by clients is kept on the docket sheet. A similar record of disbursements to clients and for them is kept on the same sheet.

On the same sheet also appears a memorandum of the fee agreed upon and the amounts paid. Since there is a monthly inspection of the ledger and since every file is ex-

amined before it is closed I managed to keep up with what is owing me whether I ever actually collect it or not.

It is my practice to keep clients fund's entirely separate from my own; therefore, I carry two separate bank accounts, and in different banks. My business account is carried under the arbitrary designation of "Trust Account". The officials of the bank are told when such an account is opened that it is a business account in which the funds of clients are carried, and that the continuing presumption is that the balance *prima facie* belongs to some one else, and not to me.

I use in remitting a voucher check, much despised by bank clerks, but one that has in the course of time saved me quite a large sum of money, not to mention my professional reputation on more than one occasion. This check is in the usual voucher form and on the inside contains a full statement of what the particular remittance covers. I have found it convenient to use a check register rather than the stub. The register affords a quick and easy way to discover what has been remitted and when. As the monthly bank statements are rendered, returned checks are checked from the register, undisbursed advances are determined by reference to the loose leaf sheets, outstanding checks are taken into account and the balance, if any, is transferred to my personal account in a different bank. If, as occasionally happens, it is necessary to retain a client's money for any great length of time, such funds are placed on demand certificate deposit, and a notation is made of the disposition on the loose leaf sheet. I might add here that I have in my possession now such a deposit made more than ten years ago which for peculiar reasons has never been paid out.

The ego has been so predominant in all that I have said, I presume I may as well violate what remains of the conventions by making one more statement in conclusion. A lawyer's business is ninety nine per cent drudgery, and only one per cent glory. The more the halos dim and the fuss

of the peach of youth is rubbed off by contact with a hard world, so, likewise, do we get to believing that the glory of our work is even less than one per cent of the whole. Therefore, since we have but one short span, let there be times of rebellion, cover up everything in sight on your desk, put on your hat, look the stenographer square in the eye until you have her completely cowed, and then in your best court house manner tell her that you are going out for the remainder of the day. If you have followed my instructions well, she will not even ask you when you are coming back. And then keeping fast hold upon the stern demeanor which I have suggested go on your way to freedom. It may be that just around the corner you will find that your shooting eye has come back or that your casting arm has been restored to you, or that a lean and hungry pair of deuces has blossomed and burgeoned into a set of fours just at the moment when the friend of your youth has stood pat on an ace high full.

The system was made for the lawyer, not the lawyer for the system.

## BUSINESS METHODS IN A LAWYER'S OFFICE.

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PAPER BY  
GEORGE S. JONES  
OF MACON

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"The old order changeth, yielding place to new."—Tennyson.

There is no more difference between the Knight-errant of romance and the modern trained soldier than there is between the old lawyer of the Judge Priest type and the lawyer of today. King Arthur and his Knights of the Round Table fought and sang, foraging as they went, without organization or equipment. For their day and time they enjoyed life, commanded the respect of their enemies, and met death bravely. Today they would be Don Quixotes and would vanish like the mists before the highly organized, scientifically fed and trained and methodically maneuvered armies of fighting men. Fighting is no longer a chivalric adventure. It is a serious business.

Whether we like it or not, the practice of law, too, has become a business. The old time lawyer carried his papers in his hat, practiced law largely "by ear" and ran his tournaments in the court houses to the applause of admiring crowds. Today we try our cases of the gravest importance with scarcely an audience, and the most momentous matters are disposed of out of court, or, at best, in the chambers of a judge who administers the law on business principles. The practice of law is still a profession, but woe betide the lawyer who ignores the importance and necessity of organiza-



tion, system, equipment, efficiency and other like terms formerly applied to business exclusively. In the olden days the lawyer was expected to know the law and to tell his client what the law was; he was expected to present his client's case to the Court as his client brought it to him. Now he must know the law and he must tell his client how to do or not to do what the law requires of him. If his client has litigation, the lawyer is frequently much more than a mere advocate, he is the *dominus litis*, and as likely as not has himself directed the transactions out of which the litigation has arisen.

Of necessity, therefore, lawyers are more and more directing their attention to the application of principles and the adoption of methods for expeditiously and effectively handling both their own and their client's affairs. The various State Bar Associations have of recent years devoted a considerable part of their time to the consideration of Business Methods in Law Offices and kindred subjects; and the Georgia Bar Association is simply lining up with other Associations in considering this subject at this time. In a recent number of the American Bar Association Journal there appears a bibliography on these subjects, and I was surprised to find listed no less than forty-six books and articles dealing with them.

I have no apology for my subject, and only regret my inability to so treat it as to make it interesting and entertaining. In a sense it is a dry subject and, like modern warfare, it is prose not poetry. Romance and fiction thrive on the knight-errant, not on the labor battalions; but the labor battalions are not the less important for that reason.

Such suggestions as I shall be able to make to my brethren of the bar are the outgrowth of twenty-five years' law practice in a middle-sized city and with few exceptions are the result of actual methods used and proved through many years of experience.

#### OFFICE.

Perhaps the first thing to be considered, presupposing

character, ability and some measure at least of experience and acquaintance, is the office. A lawyer spends more working time in his office than he spends in his home. To do the best work of which he is capable he should be comfortable, and the office should be commodious, well lighted, ventilated and heated in cold weather. It should be kept clean, both for hygienic and economic reasons. No money or time is better spent than in sweeping, dusting and keeping neat and attractive what is both one's workshop and reception room. Clothes do not make the man, but they frequently identify him as either successful or unsuccessful, diligent or lazy, careful or neglectful. I would not be so rash as to say that a good lawyer cannot be found in a bad office, but clients, actual and prospective, are justified in classifying us according to the kind of offices we keep. "It pays to advertise." and a neat, well located orderly and attractive office, even if it costs somewhat more than the other kind, is one way of advertising which cannot be objected to by the most ethical.

#### EQUIPMENT.

Of almost equal importance is adequate office equipment. This includes first a *telephone*, with individual desk extensions if more than two rooms constitute the office space. The rent for a telephone is everywhere moderate, and any lawyer who begrudges the small monthly expense required to save his own and his clients' time in paying visits and running errands should be in some smaller business than practicing law. If there is an exchange in a town, I would hesitate to employ a lawyer who is unable or unwilling to supply himself with an office telephone.

A *typewriter*, kept in good order, whether used by one's self or by a clerk, is an essential. Economy of time, convenience and appearance, all demand this necessity. But a typewriter with keys dirty, broken or out of line, is perhaps worse than none at all.

It is next to criminal for a lawyer to be without a commodious *fire-proof safe*. To lose a client's valuable and

sometimes invaluable papers is nearly as bad as to steal them; to permit them to be destroyed is little better than either other offense.

*Filing cases*, and vertical filing cases at that, are perhaps equally as important as a safe. These are now supplied practically fire-proof and with secure locks. Time wasted in hunting for misplaced papers is the greatest extravagance with the lawyer's only asset, his time; and the day has long passed when papers can be kept in a barrel and located by tipping over the barrel and searching in the debris for the needed pleading, deed, or letter.

We cannot all have complete *law libraries*, but we can intelligently select the books we are able to buy and we can keep them conveniently arranged and properly shelved and protected, where they are readily accessible for use. Furthermore, we can keep them put away in their places when not in use and thus leave the floor clear to walk upon and the desks and tables free for other and necessary uses.

I have, of course, presupposed substantial office furniture as good as one's resources will permit. Many time-saving devices are desirable, but not absolutely necessary. Such are adding machines, dictographs, handy book racks, files for printed legal forms, card indexes, and other like devices which add to the comfort, attractiveness and effectiveness of the office. Those previously mentioned are in my opinion essentials to a successful law practice, and the youngest and most impecunious lawyer should supply himself with them as rapidly as possible.

#### ASSISTANTS.

Business men have long since learned that it is false economy to have a trained artisan do mere manual labor. A ten thousand dollar man doing a one thousand dollar man's work is the worst of false economy. So a lawyer who has devoted many years to training his mind and educating his activities for legal work is simply wasting his valuable capital when he runs errands, manipulates a typewriter, or does the other numerous manual or mechanical tasks which

abound in every office. A lawyer in the very nature of things cannot spend all of his time in his office. There are courts to attend, visits to make, and many outside engagements which cannot be ignored. It is as much a mistake for a lawyer to close his door and stick up a sign, "back in 30 minutes," as it would be for a merchant to treat his customers that way.

As soon as possible, therefore, the young lawyer should provide himself with a clerical assistant. There are few instances when at least an office boy cannot be afforded. If possible, there should be a stenographer.

In our offices, there are nine lawyers, but we count it economy to employ at least eleven non-professional helpers: an office manager, who keeps the account books, handles the money, does much of the purely commercial collecting, employs and discharges the other help, and generally attends to the business details of the office; five stenographers (there should be at least four more, one for each lawyer); an intelligent woman who attends to telephone calls and divides with the filing clerk the responsibility for seeing that all visitors are courteously received, furnished the information they desire and directed to the person they, respectively, wish to see; a trained filing clerk, who is responsible for all papers and correspondence and can supply whatever is called for without delay; two office boys to run errands and wait on the lawyers and other employees; and a negro porter to keep the offices clean and do whatever manual work is too heavy for the women and boys. This is not an absolutely ideal organization. Considerations of economy have deprived some of the lawyers of a secretary, which in an organization of any size represents perhaps the best use that can be made of the money one costs.

I had some trouble to convince my partners that we needed two office boys, because they said the greater portion of the time both boys sat with nothing to do. An office boy costs, however, about one dollar per working day of eight or ten hours, say ten cents per hour. A stenographer

costs about five dollars per working day of eight hours, say sixty cents per hour. If the boy sits five hours, but during the other five does work which otherwise a stenographer might be called on to do, and thus saves five hours of the stenographer's time, we have a cost of one dollar and a saving of three dollars. The illustration is much more striking if the office boy who costs only one dollar for a whole day saves the time of a man whose time is worth twenty-five dollars, fifty dollars or one hundred dollars per day. I figure that I can well afford to pay an extra office boy one dollar per day if he saves me thirty minutes, or even less, during the whole day, and I maintain that one of the best applications of business methods to a law office is to employ ample clerical assistance for everything that can be done by a clerk, so that the lawyer's time may not be misappropriated to detail work that can as well be done by a cheaper man. If the time saved is used for general research or for purely mental improvement or recreation, the eventual returns will fully justify the outlay.

#### SYSTEM.

Lawyers have by no means deserved all the criticism they have received because of lack of system in their offices, but there is room for much improvement. There are, of course, two extremes to be avoided. We may have so much machinery that the power behind it is insufficient to make it go; on the other hand, all the power in the world is useless unless it be harnessed and applied. The Federal Government has degenerated "system" in some of its departments into "red tape," where more attention is paid to the way a package is tied up than to what it contains. The following is recommended as a reasonable workable system for a law office, which if driven by the proper power will eventuate in gratifying results.

A. Vertical files should be used, and for every employment, whatever its character, a separate folder should be employed. These folders, which just fit the filing cases, are inexpensive. In the folder every paper connected with that

employment should be placed. Many lawyers use with the folder a fastener on which the papers are filed as they come into the office. I prefer to keep the papers unattached, finding them easier to handle if not fastened together. Especially avoid wire clips, for many times a stray paper is unintentionally caught up in the clip, and thus gets into the wrong file. If the papers accumulate to such an extent that the folder becomes too bulky, two or more folders can be used, preserving the chronological order in which the papers are placed within the folder. Each folder should be numbered, and every letter or other paper to be placed within the folder should bear that number. This insures the paper finding its way into the folder if it is temporarily withdrawn therefrom. The folders should be placed in the filing drawer according to number, the smallest number being at the front.

Where there are a large number of undisposed of files, it is well to sub-divide the folders, assigning one drawer for Courts or one drawer for each court, one drawer for Collections, one for *Fi. Fas*, one for Titles, one for Miscellaneous, and so on, but preserving in each subdivision the numerical arrangement. Sub-divisions may be provided, of course, within a single drawer, using heavy cardboard markers to indicate where one class of files ends and another begins. In our office, we use the following sub-divisions:

- Superior Court Bibb County
- City Court of Macon
- Municipal and Justice Courts Bibb County
- Foreign Courts (which includes all State  
Courts outside of Bibb  
County).
- Bankruptcy Court (Local Referee)
- Bankruptcy Court (other Referees)
- United States Courts
- Supreme Court and Court of Appeals
- Fi. fas.*
- Collections - City

Collections (out of town)

Income Tax

Opinions (which includes matters for  
clients who pay us an annual  
retainer or salary covering  
office advice)

Miscellaneous.

B. Card Indexes. In connection with these vertical files a card index is used, and every folder is double indexed first in the client's name, and then in the name of the other party or parties interested. The index card for client furnishes at all times a complete record of all matters handled for that client and is a valuable memorandum showing the extent of the business handled. These cards are arranged, of course, alphabetically and are ruled as follows:

<i>Names of Parties</i>			<i>Original Number</i>	<i>Disposed of Number</i>
-----	---	-----	-----	-----
-----	---	-----	-----	-----
-----	---	-----	-----	-----
-----	---	-----	-----	-----
-----	---	-----	-----	-----
-----	---	-----	-----	-----
-----	---	-----	-----	-----
-----	---	-----	-----	-----

In the first column appears the name of client or the name of the other party. In the second column the word "*vs.*" or "*ats.*" or "*re*" indicates the character of the matter indexed. The third column carries the name of the opposite party if the name of client appears in the first column, and vice versa. In the next column is placed the number of the file, and in the last column the number of the disposed file, each file as it is finally disposed of receiving another number, the disposed of numbers constituting a different series. Each file as it is disposed of is transferred to a transfer case, where

the new or disposed numbers run regularly from front to back of each drawer.

The plan of numbering each employment has many advantages over any other system I have ever seen or heard of.

C. Briefs. For briefs I have found nothing to equal a looseleaf book, indexed with the names of the parties to each case. When a brief is finished and the case disposed of, the completed brief is re-arranged and typewritten and these typewritten pages are placed in another holder, where the pages get a permanent number and are permanently indexed. The rule is that all memoranda of authorities must be entered in the book of unfinished briefs and not on scraps or sheets of paper which can easily become misplaced. It is very convenient for each person in the office as he finds an authority in point in any case to enter it in the brief book; and from this book a trial brief can usually be prepared with a minimum of time and labor. Copies of briefs and arguments filed with the courts are kept in the folder with the balance of each file. These are usually too voluminous to be written out in full, argument and all, in the brief books. Of course, where printed arguments or briefs are filed, these both pro and con, should be bound with printed copies of the record and kept on the library shelves.

D. Accounts. Lawyers handle a great deal of money, and the records of their financial transactions should be complete and accurate. A very simple form of book-keeping is entirely sufficient. We use a combined cash book and journal and a double entry ledger. The cash book has two columns, and all moneys received are entered on the left hand page and extended into the last column, fees are entered also in the first column. On the right hand page all moneys paid out are entered and extended in the last column, the first column on that page showing disbursements for expenses which are not chargeable to clients. All moneys as far as practicable are deposited in bank and all disbursements are made by check, the balance in bank, shown on the



stub of the check book, being treated as cash on hand. This amount, together with any cash in the office safe should correspond with the difference between the two pages of the cash book.

An account is kept on the ledger with each client, and at the end of the month the totals of the "fee" columns and of the "expense" columns for that month are posted from the cash book to the ledger, and the balance of fees collected after deducting expenses is distributed among the members of the firm. It tends to disorder and disorganization to attempt a distribution of each fee as it is received, and one can very easily accustom one's self to a monthly distribution. I am also firmly convinced that a law partnership should be a partnership in fact as in other business, and the idea of several men occupying offices, holding themselves out as partners and yet attempting to keep their earnings separate, is utterly contrary to my idea of what a partnership should be.

We do not enter on the cash book or journal any fee except one that has been collected. Where it is desired to keep a memorandum of a charge for fees, it is entered on the ledger in red ink and not included in the totals, and when the fee is paid the red ink entry is cancelled.

E. Dockets. I have never found any need for dockets or calendars, except a revision of the files in each subdivision of the filing case, which is made each month in a loose leaf book, a reference to this list or schedule, or to the filing drawers themselves, being sufficient to keep every one fully advised as to what business is in the office undisposed of. A permanent record of every new file is also kept in a book in which they are listed numerically, and a similar permanent record of disposed of cases. In addition to this, each lawyer in the office keeps on his desk an engagement book, one page for each day in the year, and a "Daily Record" of work done. How these are used will be more readily understood from a *resume* of the daily routine of the office.

## OFFICE MANAGEMENT.

When employment is accepted in any matter, some one person in the office is assigned to that matter. Naturally, where there are a number of lawyers in one organization, there is a tendency to specialization. It is quite probable, for instance, that, regardless of who is employed, the examination of title to land will be assigned to one of the individuals who have qualified themselves for that class of work. Bankruptcy matters are apt to be assigned to the individuals who devote themselves principally to that line of practice. Certain individuals have an affinity for railroad cases, certain others for corporation matters, certain others for Federal court cases, and so on through the list of subjects. The responsibility for each file is with the person to whom it is assigned, and on his engagement book he must carry it forward to appearance term, trial term, etc., if a law suit, or to conference and final adjustment, if employment of some other nature.

On this, however, there is a check; for in the daily office conferences, which with my firm are held every day from 1:30 P. M. to 2:00 P. M., reports are received from every person and from every department. I regard these Conferences as absolutely indispensable, and it may be interesting to describe one. Every lawyer in the office is expected to attend all other engagements being subordinated to this. The time was selected because it was found that there were fewer conflicts at this hour than at any other time. The order of business which is strictly adhered to is as follows:

First. A report of all fees collected during the previous day.

Second. All employments during the previous day are read from the permanent record of files and information is given as to whom the matter has been assigned to. If necessary a brief account is given of the character of the engagement.

Third. All disposed of matters are read off from the permanent record of disposed files, and some one acknow-

ledges responsibility for having closed the file, collected the fee and otherwise completed the employment.

Fourth. Each person in attendance reports from his daily office record his activities during the previous day.

The advantages of this are obvious. I do not see how there can be any intelligent co-operation among associates without such reports and I propose before this paper is closed to elaborate somewhat upon the importance of maintaining these records and making reports of their contents. If any one has an engagement out of the office for the succeeding day, he makes announcement of it at this time and reports any other matter which he deems of general interest. Controversial matters are avoided or postponed to a later hour and referred to a smaller number than the entire organization for discussion and settlement.

Fifth. The balance of the half hour is consumed in calling off from the revised schedule of files, the name of the case or employment, in order that the person in charge of each file called may be reminded of it and may report whether or not he has prepared it or needs further assistance from some one else in completing his work. The limited time allows only a few matters to be called each day, say twelve to twenty. On most of them no report is needed except that the matter is receiving the needed attention; but this method assures calling over within the course of every few months every undisposed of file in the office and, if it does no more, serves as a reminder to the person in charge of the file.

I cannot too strongly commend to every lawyer the value of these daily conferences. A large organization cannot co-ordinate without them. A smaller partnership, even one of two members, will find them of the greatest value. It is the one certain opportunity to "match minds" on the "business" of the law office. It keeps the partners in touch with each other and spurs to continuity of effort and energy every member who attends. The lawyer practicing alone will find that thirty minutes each day set apart for com-

munion with himself or his office assistant will keep alive his own interest in the "business end" of his law practice and produce results greatly outweighing the time and effort required to "check up" the past day's work each day of the year.

#### DAILY OFFICE REPORT.

Every business except the practice of law maintains a record of its transactions. The merchant keeps his counter book on which he records his daily sales, the banker has records from which every one of his transactions can be reproduced, the doctor keeps at least a record of his visits. Law, more nearly an exact science than any of these vocations, has lagged behind in the record kept of its various activities. We have done things in a haphazard way depending upon our "*honorarium*" for the maintenance of our office and our homes, with no basis for fixing our compensation and no uniformity for our charges. How often have we seen a lawyer called to testify as to the character, extent and value of his services in order that the court might intelligently determine the fair amount to be allowed him as a fee, hem and haw, and finally in the absence of any record from which he could recall the hours and days of investigation, study and negotiation devoted to the case, practically base his claim on merely "thinking about the damn case."

The more advanced lawyers now are practically unanimous in recognizing the importance of each lawyer's keeping a daily record of how his time has been occupied. The importance of such a record will be readily conceded, and a surprising feature is that perhaps only about one-half of our time can be definitely assigned to specific employments. A lawyer must necessarily spend much time in general reading, keeping up with current business, new laws and general information. Current correspondence, casual conferences, the discharge of public duties as a citizen, and the like, consume an amazing amount of time. A daily record of the use of one's time is the greatest possible help in reducing waste

in the use of time. To report each day to one's associates, or even to one's self, that four, five or six hours of the previous day were actually used for clients on specific employment, compels us to inquire how the balance of the day was employed and whether profitably or not.

Every one will agree that the basis for charging fees is one of the most difficult and unsatisfactory of a lawyer's problems. In an effort to stabilize charges, rates of commissions have been adopted on collections, on the examination of titles and on perhaps a few other kinds of practice; but these after all constitute the least important and least remunerative of a lawyer's work. On what basis are fees fixed? I maintain that there are four bases, stated in the order of their importance.

First, Time occupied;

Second, Amounts involved;

Third, Character and importance of the questions involved and the work done;

Fourth, Results to clients.

It is the combination or aggregate of these elements which consciously or unconsciously actuates us in determining what to charge. Unless they are intelligently considered we are apt, however, to overcharge one client and undercharge another, and this of course is to be avoided as far as possible.

I undertake to say that any one who keeps an accurate account of the time occupied on a given employment will be surprised in nine cases out of ten at how far the actual time will exceed any estimate which would be made without an accurate record. Preparation on the law and facts, investigation, interrogation of witnesses, conferences with clients, briefing, the actual time spent in attendance on court in litigated cases, correspondence, and a great many other things, require the time of a lawyer and of his assistants, and, without an accurate record, a large part of this will be overlooked and forgotten.

The average law office is open five and one half days per week. Omitting night work, there are on the average eight working hours in each day, or forty-four hours a week, amounting in a year's time to two thousand, two hundred, eighty-eight hours. My experience demonstrates that half of this time is occupied in general matters for which no specific charge can be made. If the working hours in a year, therefore, are reduced to one thousand, one hundred, forty-four, five dollars per hour will represent an income of only five thousand, seven hundred and twenty dollars; from which must be deducted the expense of conducting an office, and a reasonable return on the investment which every lawyer makes in preparing himself to practice law and in providing a library and office equipment. It is especially true of a lawyer that a long time must be spent in securing an education and preparing to practice, and these years are expensive and wholly unproductive. For perhaps the first ten years of his practice, no adequate return is realized. These are the "lean" years, and they should be taken into account just as every business man takes into account the expense of building up a business and establishing a profitable enterprise. If we value such investment at only ten thousand dollars, which is much too low, this amount, at seven per cent represents seven hundred dollars, which should be deducted from every income as a return on the capital investment. The minimum expense for an office and stenographer even in the smaller towns is, say, seventeen hundred dollars per annum; and from gross income should, therefore, be deducted at least twenty-four hundred dollars per annum before anything can be said to be realized for the lawyer's work. In many instances, this amount should be largely increased. If it is desired to realize a net income of even three thousand, three hundred and twenty dollars a year, clients should pay not less than five dollars per hour for the time actually employed on their business. If a lawyer's net income is ten thousand dollars *per annum*, the minimum rate to be charged for his

time actually employed should be approximately three times the amount stated, or fifteen dollars per hour.

This *per diem* basis should be the lowest basis on which to fix fees; but in many instances, because of the small amount involved, the inability of clients to pay adequate compensation, unfortunate results, and other things which enter into every employment, the charge must be reduced. Therefore, where the amounts involved are large, where the character of the questions involved is grave, where the work is important, and where clients are well able to pay, the average time basis must be enlarged upon, if the lawyer is to be adequately compensated. Some business has to be taken for a fee contingent upon results and, whether we like it or not, the results obtained must influence to some extent every fee, for after all, to adopt a railroad expression, the charges cannot be higher "than the traffic will bear."

It is important that clients shall be satisfied with the reasonableness of the charge made. It is as much a mistake to charge too little as to charge too much. A lawyer who does not appreciate the value of his own services will find that clients are apt to place no higher appreciation or value on them than he does himself. On the other hand, exorbitant charges are neither right nor expedient. They are not right, because we frequently have in our own hands the power to force clients to pay whatever our consciences will permit us to charge; and every one will agree that it is reprehensible to take advantage of a situation of this kind. It is not expedient, because a client thoroughly dissatisfied with an exorbitant charge is apt to seek some one else, and the "good-will" of a lawyer's business is to this extent destroyed. I have found it much more satisfactory to any client to have a bill rendered showing in detail the time occupied on his business, rather than merely a lump sum for results obtained; and in a good many instances, where we have named a fee and clients have demurred to the charge, a detailed statement from the daily office record has not only removed any dissatisfaction with the charge, but has

brought expressions of appreciations that the charge has been so moderate.

#### DAILY OFFICE RECORD.

There are two recognized methods for keeping such a record. A great many offices use small tickets, on which are placed the name of the client, a description of the employment, the character of the work done, and the amount of time occupied. These tickets are dated, the number of the file is placed on them, and they are kept in the folder or preferably are arranged by number in a filing drawer or cabinet. When the employment is ended, it is a very simple matter to take these tickets which, because they bear the number of the file, are all together in the drawer, and from This system has many advantages, but in our office we have them make up a statement of the time actually employed. found it more convenient to have a daily sheet, ruled so that the name of each lawyer and the date may be entered thereon. We have found that usually twenty lines are sufficient to contain a day's record, and the sheet has six columns. In the first column is entered the name of the client; in the second the name of the opposite party or a description of the employment; in the third the character of the work done, either "conference," "preparation," "briefing," or whatever the work may be; in the next column the amount of time consumed, in the next number of the file, and in the last column a check mark which indicates either that it is not necessary to make a permanent record of the time occupied or that it has been posted to a permanent sheet on which is kept a record of all the time occupied in that employment. These permanent sheets correspond with the numbered folders in the filing cabinet. There is perhaps a little more work connected with the system which we use, but it has the advantage of presenting on a separate sheet for each day the activities of each lawyer in the office. I attach one of these "Daily Office Records" as follows:



# DAILY OFFICE RECORD

**MR.**.....

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[illegible]

## OVERTIME

I have examined the systems employed in a great many of the larger law offices throughout the United States, and almost without exception a daily record is kept of each lawyer's time, and this is the primary basis for billing clients with the fee charged for work done. The advantages of keeping such a record are so obvious that it seems unnecessary to further elaborate on them. Besides being able to inform clients accurately and satisfactorily of the time consumed in their cases, it is of inestimable value to the lawyer himself to know how much time each class of business in the office consumes. It will frequently be found that some client highly regarded and for whom a great amount of work is done, is really unprofitable because the annual returns from such a client are not adequate. As frequently we are led to appreciate more some client the returns from whose business are surprisingly liberal when compared with the time consumed.

A lawyer has two classes of business: first his clients' business, and second, his own. The conscientious lawyer is too much disposed to subordinate his own interests to

those of his clients. However much we may love our profession and however interesting the practice of it may be, I dare to assert that by far the greater number of us engage in the practice of law in order that we may earn a livelihood therefrom. It behooves us, therefore, to follow the lead of business men and study efficiency, the elimination of waste, the accomplishment of the best results with the least effort, and the least expense, and the other principles which are recognized as necessary to the conduct of any successful business in these days of strenuous competition and most earnest endeavor. I hope that some of the suggestions in this paper may at least direct our minds to the improvement of the conditions which affect the second class of a lawyer's business, i.e., his own business, on which he must depend for the maintenance and comfort of himself and his family. After all, no matter how high our duty may be to our clients, our first duty is to our families and ourselves. The maintenance of reasonable business methods in a lawyer's office will enable him to be fair to his clients, fair to himself, and to accomplish, during the comparatively few years during which he reaches the peak of his efficiency, the best, most profitable, and most satisfactory results.

## WHY IS A STATE JUDGE?

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ADDRESS BY

JUDGE R. C. BELL

FORMERLY JUDGE OF THE SUPERIOR COURTS OF THE ALBANY CIRCUIT  
NOW JUDGE OF THE COURT OF APPEALS OF GEORGIA

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This is the subject which the Executive Committee has ordered to be discussed, and the foolish form of the question is taken as an open invitation to a word of jesting; but in order to avoid such a treatment of it, I will translate the subject into "The Part of the Superior Court Judge in the Maintenance of a Respect for the Law."

It is the law that all persons are presumed to know the law, and it is interesting to notice that this presumption includes even judges of the Superior Court. The wonder is that the Supreme Court of this State should ever have so held, but they have most assuredly held that Superior Court Judges are presumed to know the law, in the case of *Moody and wife v. Davis*, 10 Georgia Reports, page 412. This presumption while not so as to others, is rebuttable in so far as it applies to the judges; and probably has been very strongly rebutted by the reversals of the seventy-one years that have passed since that decision, the latest pronouncement of the Supreme Court upon this point. The Supreme Court has never modified or overruled this decision, but has, it seems, studiously avoided ever making any further reference to the question. It is quite true that it has been held in numerous cases that the burden is upon him who alleges error on appeal to show it, that error in the trial

court is not to be presumed, but this is a very different case from holding that the trial court is supposed to know the law. It means there is no presumption that he is not a good guesser,—this and nothing more. However, the decision mentioned, not being modified or overruled, still is to be accepted as the law.

The Superior Court judges are equal in power, if not in glory. In *Shreve v. Pendleton*, 129 Georgia, page 374, it was sought to have one Superior Court judge mandamus another. A refusal by the one so to command the other was held by the Supreme Court to be a very proper judgment,—not in courtesy, but because, I infer from the Court's reasoning, that the writ of mandamus can never move upward nor even horizontally, but always downward,—from a higher authority to a lower; and as neither had a power superior to that of the other, the writ could not but be denied. If one judge can not mandamus another, I suppose all of them save one, could not mandamus the latter as the writ would still be moving horizontally. So we prove that one judge has no more power than any other judge, and at the same time has as much power as all of the others combined.

The work of the Superior Court Judge is not less important than that of any other whomsoever, regardless of station or position, in the perpetuation of the civilization of mankind. He is the standard bearer of law and order for a very large portion of his state. The population of the average circuit is approximately 100,000 people, the welfare and happiness of whom, under the law, is his great concern. No preacher ever had so large a flock or congregation. The Governor himself is not intimately in touch with so many people.

The court is the law in action. Many think of the law only as they think of the court, and of the court only as they think of the judge. Conditions of peace, and order, depend largely upon the respect which the great mass of

men of good intentions have for the law. If these shall respect the law, a wholesome public sentiment will prevail, restraining the lawlessly inclined, and the judge may well hold himself to account in a great measure for the rise and fall of that respect.

He must show that the law is strong. He must show that it is equally for every man's protection; that it plays no favorite on account of station, class, creed, power or influence; that it is just and reasonable, sure and unwavering; that it is severe if need be, but never more so than the safety of society requires: that it is merciful where mercy is due, and that always preferring mercy, it will nevertheless lay on its punishment fearlessly, firmly and sufficiently for the correction of conditions of evil wherever and by whomsoever they exist, and for the establishment of the supremacy of its might. These qualities must prevail in the administration of the laws by the court, or a laxity of the standards of citizenship and general disrespect of the law will arise, and crime will thrive. The judge is heavily responsible for the demonstration of these virtues of the law. He is the wheel over which the tide shall turn, either for good or for ill, with regard to the endurance of those principles of justice upon which our cherished institutions are founded.

The custom which requires of the judge that he shall give a voluntary charge to the grand jury at the opening of each regular term, in addition to matters enjoined upon him by statute, is an opportunity to focus the attention of the people upon the ideals and duties of good citizenship, and should be accepted and used as such. There are doubtless those of the profession, and maybe others, who think such charges are bombast and buncombe, but to the judge whose purposes are unselfish and whose aims are only for the common weal, the time so devoted is never lost.

It is surprising to reflect that the native born citizen takes never any obligation to support the constitution or laws of his country, of any kind or character, unless he as-

sumes an oath of office. To obtain the right to register and vote, he has only to swear that his taxes are paid, and promises nothing in the way of allegiance. Civil government is taught but little in our schools, and the teaching of the responsibility and duties of citizenship is too small a part of the curriculum of our common institutions of education. The knowledge of these is acquired mostly by absorption. There are hundreds in every community whose best ideals are instilled by the lessons they learn in their court house. They attend, maybe, no other place where the law is a thing to be thought of, and perhaps they are on hand when the court convenes simply and honestly desiring civil and ethical light. The convening of a Superior Court should be and may be the occasion of civil revival, its term a sort of protracted meeting in the interest of the cause of law and order, making the temple of justice to be revered for what its name implies.

The judge ought to concern himself not with public opinion, unless to shape it, and to lead it in the paths of social rectitude. In my humble judgment even as a matter of policy, it is most disastrous to seek to know the pulse of the people before entering up judgment. And considering the base question of policy alone, the surest way of gaining the approbation of the largest number of people is "To do only that thou thinkest right." The safest and best route to the destination of justice, as well as the one of least resistance, is always in the middle of the stream. There may be eddies and whirlpools out on the side waters, making commotion, and pulling against the larger course. These are like the small factions and cliques and the specially interested. They will oftentimes fool one into believing that they are the chief and central current; and to yield incautiously to the influence of these deceptions is to abandon the onward sweep to the judgment of truth and to lose, even if unwittingly, the approval of the great mass and majority of the people who are moving quietly but surely

onward in the stream of legal righteousness. The judge who yields his own judgment to the importunities of the crowd diminishes the influence of his office for good, weakens the general respect for the law, gains not the favor even of the self-same crowd, but incurs the condemnation of all just men.

For instance, who is to say whether this man or that may pay a fine, or may not? The man who sits upon the bench and is sworn as judge, or the unsworn and uncommissioned throng, who may not have heard the merits of the cause, who are not looking beyond the particular case in question, are not pledged to do justice or to lay aside interest or bias? A firm and courageous determination in the judge not to allow a responsibility to be transferred, is one of the pillars of that respect for the law, to which I have already referred as of the greatest importance, and if persevered in and stoutly maintained will tend to an end of the unholy attempts to usurp the sacred throne of the judge's conscience, and to the quiet and dignified respect of the people for the courts and the law. Any other course on the part of the judge is to surrender, at least, in part, the commission which was issued solely and absolutely to himself, and of which he alone is sworn to do the execution.

The judge must live judicially like Caesar's wife, above suspicion. His life and conduct should be an example of a steadfast obedience to the requirements of the law; and, while these observations are intended to apply only to his judicial conduct, yet inasmuch as the people can hardly understand that the judge is one thing and the man who holds the office an altogether different thing, it would be the ideal if he could apply the same standards to his personal behavior.

The judges must always be without passion in the trial of a cause. We can imagine nothing so undermining to the confidence and respect of the people in the court and in the law as an angry judge. No matter what happens, what

rulings must be made, what reprimands, punishments, or sentences must be imposed, what contempt is even to be corrected, the judge must be calm. His judgments should be those of the law, not merely of the man. He is only the law's mouthpiece, and the law is never mad. He must know, too, that "whom the gods would destroy, they first make mad"; that passion is so certain to err, that the very law he seeks to administer, makes tremendous allowances for it in numerous instances. He cannot be thought to be just, when known to be in a rage, nor can he be. As was said by Judge Joseph H. Lumpkin, in *Thornton v. Lane*, 11 Georgia Reports, page 539: "A judge, when he enters a temple of justice, should say to his passions, if possible, as Abraham did to the young men, when about ascending Mount Moriah, 'Abide, ye, here while I go up to worship.' "

The judge must demand the utmost of deference at the hands of the bar and should extend a fair and courteous treatment from the bench. In *Wright v. the State*, 18 Georgia Reports, page 394, the Supreme Court outlines certain rules of conduct that we may profitably recall touching the relation of court and attorney: "Fidelity to the court requires from the bar outward respect in words and action. The oath of an attorney undoubtedly looks to nothing like allegiance to the person of the judge. In matters collateral to official duty, the judge is on a level with the members of the bar, as he is with the rest of his fellow citizens; his title to distinction and respect rests on no other foundation than his virtues and qualities as a man . . . . Counsel should ever remember how necessary it is for the dignified and honorable administration of justice, upon which the dignity and honor of their profession very much depend, that the courts and the members of the courts should be regarded with respect by the suitors and the people; and that on all occasions of difficulty and danger to that department



of government, they should have the good opinion and confidence of the public on their side."

If the judge shall expect so much of attorneys, may not the attorney expect a reciprocal treatment from the judge? Nothing can ever be gained by embarrassing an attorney, either from passion, or for the purpose of an exposition of the judge's wit or power. An advocate who dares to overstep his rights at the bar must be restrained or dealt with as the circumstances may require, but any sort of tolerance by the court of the vile and vicious notion obtaining in some quarters, and likely in some corner of every courthouse audience, that the lawyers are tricksters and obstructionists, is to discredit the very fundamentals of the judicial system, and to make believe that the court house is only a place of legal jugglery. The judge, if such there be, who does not realize that the lawyers can make his every day of court a failure, and that on the other hand they will cheerfully give their fair, unstinted and intelligent assistance to the court when they believe it is wanted and appreciated, is not enjoying the good results which his court should yield, nor are the conditions of law and order in his circuit, I imagine, what they otherwise might be.

In dealing with counsel or in passing a judgment or sentence to a party in a case, the judge should remember that he holds the reins of power, and that the match is not an even one, no matter what are the merits of the cause, nor the wit or wisdom of the two; for the judge, as it were, is armed with the great power of his office, and should remember that any sign or manner of tyranny by the court in any event will tend to the disgrace of the bench and to lessen the good the court can do.

At the risk of being considered severe and inhuman, but assuring you that I would countenance nothing but the most humane treatment of every prisoner, I must protest against the tendency of the times to an unreasonable and maudlin sympathy for the individual who is brought to issue

or to judgment for an infraction of the criminal law. The object of punishment, as quite well known, is two-fold: first, to discipline the criminal with a hope of his own reformation, and, secondly, to deter others from similar misdeeds. The latter object is generally regarded as the principal one, while avenging the wrong does not enter the matter at all. In these latter days, by an illogical theory of the object of punishment, the individual has become of greater importance than the whole of the people he may have wronged; and the chief of all movements seems to be that he should be brought to a sufficient repentance to pledge a better life, then to pet him and fete him, give him a certificate that he has been completely made over, and let him go. Maybe he turns out a success and adds a star to the crown of somebody's good offices and maybe he does not. But whether he does or not, the law in such cases loses its deterring force, the chief force it should have. If one is so unfortunate as to violate the law, it is but natural justice that he should become the means of restoring its broken places through punishment sufficiently severe, if no principle of humanity prevents, to make all others fear to indulge in the particular crime. Thus the lapse of one may save numbers of others.

It sometimes happens that one man must be sacrificed for the saving of all. It is a dangerous thing to make a hero out of any man in jail, though I have seen it become a fad and have observed the over-zealous ones courting the honor of some communication with the notorious man of the hour, who is justly behind the bars. Great waves of such a misguided and pernicious sentiment will now and then dash against the judge's stand; but let him remember, in all such events, that his office must remain the bulwark of a justice that shall be permanent and abiding—not the lighting place of a passing emotion; that the station which he shall hold is the principal fortress of the law; and that if he surrenders the standard which is to be carried in the

interest of all as a unit, not of the individuals, the authority of the law will inevitably falter and the morale of our civil structure will degenerate to a grade unworthy of an enlightened people. If the judge cannot hold out for the law, how can he expect his subordinate officials, and the jurors and citizens to do so?

We cannot close without referring to the matter of the trial judge's discretion, his greatest means of maintaining a proper regard for the law.

While it was said even as early as in *Cook v. the State*, 11 Georgia Reports, page 63, (1852) by Judge Nisbet: "It is to be feared in these days of reform that the judges will be so strictly laced as to lose all power of vigorous and healthful action. I have but little fear of judicial power in Georgia so aggrandizing itself as to endanger any of the powers of other departments of the Government; or to endanger the life and liberty of the citizens or to deprive the jury of their appropriate functions; the danger rather to be dreaded is making the judges men of straw and thus stripping the courts of proper reverence and annihilating the popular estimate of the power and sanctity of the law," and while since that time a number of limitations have been placed upon the judicial prerogative, by such as the Act inhibiting any commendation by the judge of the verdict of juries, the Indeterminate Sentence Law placing the power of punishment in felony cases exclusively in the hands of juries, and possibly by other enactments, in none of which I see any cause of complaint by the judges;—there remains yet a great field in which his wisdom, mercy and equity of conscience may function almost unrestrained. This has been defined as "An impartial discretion, guided and controlled in its exercise by fixed legal principles; a legal discretion to be exercised in conformity with the spirit of the law, and in a manner to subserve and not to defeat the ends of substantial justice."

Judge Pottle, in *Griffin v. the State*, 12 Georgia Appeals Reports, page 620, (5), has said: "An appeal to a judge's discretion is an appeal to his judicial conscience. . . . It is not an arbitrary power but one which must be exercised wisely and impartially. In its application in this State, judicial discretion is practically synonymous with judicial power to be exercised not in opposition to, but in accordance with, established rules of law."

This power is peculiar to the judge of the Superior Courts, and also to the City Court judges within the scope of their jurisdiction. It is not conferred by the law upon the judges of our Supreme Court and Court of Appeals. However learned they be, one thing still they lack: discretion. They must have knowledge but not discretion; the Superior Court judges must have discretion, whether knowledge.

This discretion is practically illustrated in the matter of punishment within that limited realm still belonging to the judge. His discretion here may become a veritable spring of respect for the law. Some men have the notion that every misdemeanor ought to have its own fixed penalty or its own particular fine. Nothing is so foreign to a fair administration of criminal justice. In measuring the quantum of punishment to be imposed, the age, environment, moral and mental enlightenment, educational advantages, financial means, temperament, and the like of a person convicted are all to be weighed with the utmost good judgment. One man may be punished severely by what another man hardly feels, and the judicial discretion is not fairly exercised unless there is in every case a weighing of the circumstances not only of the offense, but also of the man as well. The punishment should be made equal in fact, not in figures.

In the hearing of motions for new trials, the judge is required to function with his conscience.

It is held in *Sims v. Humber*, 41 Georgia Reports, page 209, that "The trial judge has no legal power or authority to set aside the verdict of the jury when the evidence is conflicting, unless the verdict is decidedly and strongly against the weight of evidence;" and in *A. R. R. Co., v. Holcombe*, 76 Georgia Reports, page 592, that this discretion is not an arbitrary, plenary or dispensary one, but one to be exercised according to legal principles;—and these cases I believe are still the law, although it has been determined in many later cases that the first grant of a new trial, when the verdict is not demanded by the evidence will never be reversed. The conclusion from all of these cases is that the responsibility is squarely upon the shoulders of the trial judge to grant a new trial where the verdict is decidedly and strongly against the weight of the evidence, and against the principles of justice and equity, even though conflicting; and while he may do so without reversal, in other cases that are issuable, he must act in every such case, whether granting or refusing, in peril of his own good conscience, —with rules of law to guide him, to be sure, but none to coerce him. His responsibility within the range of his legal discretion should be always, as Judge Pottle has said, one of judicial conscience.

In the grant of injunctions and receivers the judge cannot be too careful. The more especially is this true in the appointment of receivers. It is a serious and tremendous responsibility to take over the custody of another man's property, until a judgment upon trial places it in the hands of the sheriff, the court's executive, and it would be well in every case before making an appointment for the judge to weigh carefully again the provision of Code Section 5495, which declares that "Creditors without a lien cannot as a general rule enjoin their debtors from disposing of their property, nor obtain injunction or other extraordinary relief in equity," to which rule the exceptions are few; and also Section 5477: "The power of appointing receivers and

ordering injunctions should be prudently and cautiously exercised and except in clear and urgent cases should not be resorted to." Wherever it is possible, the opposite party should be given a hearing by a rule *nisi* before any such relief is granted. *Ex parte* orders are to be given only in the most extreme events upon the most urgent and unequivocal grounds. In matters of this character, an abuse of discretion may cause untold and irreparable damage. Attorneys should also remember these principles and be sparing in their prayers.

This judicial discretion is the power that protects the wards in chancery; that stands in the way of unjust verdicts; that thwarts miscarriages of justice; that shields the weak from the oppressions of the strong; that saves the innocent and insures a fairness even to the guilty; that halts the onslaughts of prejudice and ignorance; that keeps the scales of justice equally balanced. It is the field of justice and equity, the seat of mercy and the abiding place of wisdom. Its exercise must require the greatest courage and the holiest of motives. The shirking of its responsibilities is to fail ignobly, while in its just application lie the judge's best means of service and his paramount claim to greatness.

Knowledge is of the head, mercy of the heart, wisdom is of both. The judge's discretion is a combination of his knowledge, mercy and wisdom; a union of the powers of the head and of the heart. An authority so wide in its scope must be cautiously applied. It must never oppress nor lapse into harshness. It is said of the Governor General of Canada, an appointee of the British Crown, that he has the power of veto, absolute and unlimited over every piece of legislation proposed in the Dominion, and that he retains this power because he does not use it. So with our good friend, the Honorable Sam Bennett. He has the power and privilege of speaking to this Association for two hours every day if he likes on any subject that he pleases,

and he retains it and always will, I am sure, because he does not use it. So, in a measure, with the judge. His power of discretion is preserved and kept strong for the hour of need only by a wise and judicious exercise of the prerogative. To exercise it needlessly simply because he has it is to become a menace to the principles of free government and to be shorn of it all.

Let it be remembered that "while actions are always to be judged by the immutable standards of right and wrong, the judgments we pass upon men must be qualified by considerations of age, country, station and other accidental circumstances, and it will be found that he who is most charitable in his judgment is generally the least unjust."

With a mind and a heart so principled, the office of judge is a most exalted one. The opportunity for the service of mankind and of one's country can be no greater in any other line of endeavor. In the words of Webster: "Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundation, strengthens its pillars, adorns its establishments, or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character with that which is and must be as durable as the frame of human society."

In conclusion, I am sure it is not a sacrilege to quote also what Bacon has said; that "judges should imitate God, in whose seat they sit."

## WHY A JUDGE?

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ADDRESS BY

JUDGE NASH R. BROYLES  
OF THE COURT OF APPEALS OF GEORGIA

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*Mr. President and Members of the Georgia Bar Association,  
Ladies and Gentlemen:*

When I was notified that I was expected to say something on "Why a Judge?" memory recalled two old friends of my childhood, to-wit, "why is a bedpost"? and "why is a mouse when it spins"? Fortunately, however, unlike those ancient queries a sensible answer can be returned to the present one. The query, "Why a Judge?" can be answered in a way, by putting other queries, as "why a lawyer"? "why a system of laws"?—"why governments"?—"why civilization"?—"why anything"? All of these questions can be answered by one word: necessity. Yes, a judge is the offspring of necessity. And I trust that none here will be so unkind as to remember the old saying that "necessity knows no law," and to suggest that in one respect at least the child resembles its mother. If any such critic be present I would remind him—or her—that sometimes a child knows more than its mammy or daddy. For instance, I cite the well-known story of the college boy who when at home on vacation took his uneducated old father out of doors one moonlight night, and pointing to the moon and a nearby star said, "dad, you see that little star near the moon? Well, dad, that little star is hundreds of times big-



ger than the moon. Now what do you think of that"? The old man looked up at the resplendent full orb'd moon and the tiny star twinkling besides it and slowly replied, "well, son, all I've got to say is, it's got a durned poor way of showing it."

In discussing, or "cussing," judges, we must remember that they are of various kinds and degrees. One of the most widely known species in this country is our baseball umpire, and I understand that his decisions are, as a rule, no more popular than are those of his "higher brow" brethren. Often the condemnation of this unfortunate official is not deserved, but occasionally it is, as in the following instance which occurred in one of our negro baseball leagues: It was the last half of the ninth inning, the home team was one run behind and two out, but had runners on first, second and third bases, and its "Babe Ruth" was at the bat. At this critical moment the pitcher weakened and threw four balls without a strike. As the disappointed slugger dropped his bat and trotted towards first base he was astounded to hear the umpire yell, "you're out"! Wheeling and rushing toward the umpire the infuriated player angrily shouted, "how come I am out"? The judge of play looked him over scornfully and witheringly replied, "you fool nigger, don't you see that the bases are all full and you have got nowhere to go"?

All of us have heard of that famous Georgia justice of the peace who tried a man for murder, adjudged him guilty and sentenced him to be hanged, and whose judicial dignity was grossly outraged when he was informed by the higher courts that he had exceeded his jurisdictional authority.

Another judge whose life is full of trials and tribulations is our city recorder or police court justice. I am not now speaking from hearsay knowledge, but from bitter, personal experience. In our larger cities he sometimes disposes of several hundreds of cases in a day. He, therefore,

has to "shoot on the fly," and necessarily he sometimes misses in his judgments. Under the omnibus charge of, "disorderly conduct" he tries every known offense, from spitting on a sidewalk to murder. In the vast majority of cases brought before him his judgment is final, the writ of *certiorari* being seldom employed. The position of recorder, therefore, is a most important one and great care should be taken in selecting the person to fill it. Fortunately his heavy and nerve-wracking duties are often lightened by some bit of unexpected humor which frequently, to the great delight of the court-room audience, is at his expense. On one occasion, I was interrogating a little darky who had testified that the defendant on trial had struck him with a rock. I inquired several times as to the size of the rock, without eliciting any definite answer from the witness. Finally, and rather impatiently, I asked, "can't you give me some idea of its size, was it as big as my head?" The little piccaninny looked me over and seriously replied, "well, Jedge, it was about as long as your head, but not as thick." Another time I was trying an old-time darky for an assault and battery, and his offense was that the negro assaulted had called him "a black scoundrel." He had given the man a severe beating, disproportioned to the abuse received, and I was lecturing him about it, when he interrupted me and said, "Jedge Briles, can I ax you just one question?" "Fire away," I told him, and he said, "Jedge, if that no-count nigger had called you a black scoundrel, wouldn't you have busted him just like I did?" "Why, no," I replied, "if he had called me a black scoundrel I would have paid no attention to him, it would have been too absurd to notice." The old darky was plainly "floored," and his face showed his disappointment, but suddenly his countenance lighted up and he exclaimed triumphantly, "but suppose, Jedge Briles, instead of calling you a black scoundrel, that nigger had called you the kind of a scoundrel that you is?"

Why, indeed, a judge?

And my friends, I can assure you that the job of a judge of the Court of Appeals is not precisely as soft as a feather pillow nor quite as delightful and restful as a bed of scented roses. And if my assurance needs any corroboration I refer you to my fellow sufferers on the bench, here present. When you have patiently read and re-read every word in some voluminous record, carefully considered and passed upon every assignment of error, and, with great mental labor and "travail of spirit," produced an opinion which you are sure will stand forever in the books as an enduring monument to your legal learning, research and discrimination, it is not particularly gratifying to be politely informed by counsel for the losing side, in his motion for a rehearing, that you have overlooked all the Georgia decisions bearing on the case, all the pertinent, foreign cases, the Code of Georgia and the common law of force in the State. I repeat, why, indeed, a judge?

Speaking, however, in a more serious vein, the position of a judge, whether it be on the trial or appellate bench, is an all-important one, and one that vitally affects the destiny of a state or nation. Woe be to that country which has a weak, cowardly, or corrupt judiciary! Unless the springs of justice are kept pure and undefiled, the nation that drinks therefrom will surely sicken and die. Especially is this true in our country where the judiciary, headed by that almost omnipotent body—the Supreme Court of the United States—has far more vested power than the judiciary of any other nation in the wide world. The constitutional pillars that support our Republic could easily be pulled down by a venal judiciary, and anarchy and "the man on horse-back" would rule in the place of law and justice. Let us see to it then that the ermine of our judges is kept spotless and undefiled, and that our judicial timber is sound and incorruptible.

Turning to our local condition, the greatest stain on Georgia today is her lynching record, and that stain will

that red-handed murderers and defilers of our women shall never be blotted out until the people of this State are assured be brought to certain and speedy justice. Long delay by the trial courts in arraigning such criminals, and extended delay by the reviewing courts in passing upon their appeals, together with the granting of new trials on pure technicalities, have done more than anything else to bring our laws into disrepute with the masses of the people and to encourage mob violence. And mob violence, together with the lawless acts of individuals, constitutes the darkest cloud on the horizon of our state and nation. About the middle of the nineteenth century, Lord Macaulay, the distinguished English historian and statesman, made a prophecy about our country. Said he, "the Republic of America will be destroyed in the twentieth century as the Empire of Rome was in the fifth but with this difference: Rome was destroyed by the Huns and Vandals from without, while America will be overthrown by the Huns and Vandals engendered within her own institutions." My friends, I am not an alarmist. I can not, I will not, believe that God, in his infinite power and mercy, will allow this Republic—the great beacon light to a shipwrecked world—to be destroyed. But remember, that "God helps those who help themselves," and if the law-abiding people of this nation do not awaken from their lethargy and turn back the tide of lawlessness that is sweeping over every section of our land, our civilization will be demoralized, no longer will life or property be secure, happiness will be only a memory, and our constitutional guarantees nothing but solemn mockeries.

## THE PROHIBITION LAW

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ADDRESS BY

JUDGE S. H. SIBLEY

UNITED STATES JUDGE FOR THE NORTHERN  
DISTRICT OF GEORGIA  
(Stenographically Reported)

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Mr. President: I don't see all of the elect here—these solicitors and district attorneys. Well, I see enough to go ahead on. I was troubled when asked to speak to the solicitors and district attorneys because I felt that I had nothing to say. I am now troubled because I feel that there is so much to be said that I have not the ability or the time to say it nor the discrimination to select it. I don't know enough in detail about the co-operative work that they have to deal with here to make practical suggestions, and what I say must be on general lines and general lines are always broad ones.

There is written somewhere in Scripture—I am sure it is there, but I hope nobody will call for the authority—a serious, personal question like this: “What is your life”? The present day Federal District Judge has to answer:

“Principally an effort to enforce the Volstead Act.” I know a District Attorney has to make the same answer, and from the similarity of their positions the solicitors-general and the solicitors of the city courts are about in the same fix.

Now I am in the unfortunate situation of having been told yesterday morning by Judge Powell that my life, being

what it is, is being wholly and totally wasted, and what I am doing is entirely futile; that it is desperate, if not despicable; and I have not exactly recovered from the surprise and the shock yet. I am going to waive it aside and ignore it because I cannot answer it as it ought to be.

I agree, as a general principle, that all permanent and successful statutory law must be based on a real need, the remedy for a real evil, supported by a real public sentiment. His application of this principle to the value of prohibition legislation I am disposed to meet with a general denial, that puts on him at least the burden of proof. I don't see it as he does, either the object or the results of it, and therefore I am still able to live in hope, and to pursue my appointed destiny without those awful feelings of despair that disturb my good friend. (Applause.)

I want to say to you that one of the first things that you must have and I must have, if we would succeed in our task, is the firm belief that the law entrusted to us to execute is right. I don't mean sentimentally right. Prohibition and anti-prohibition with most people are a matter of sentiment. Some are prohibitionists because of bitter experience with the power and blight of alcohol; some from purest altruism; some from selfishness or phariseism. Some are anti-prohibitionists because of sensuality; some from greed of money; very many from the inborn Anglo-Saxon spirit of resistance to what is conceived to be oppression—this last an attitude that commands the respect even of those who do not share it. God knows I have an abundant background of sentiment for it. I was raised both a prohibitionist and a Presbyterian, and nobody that ever took either one in youth got over it to my knowledge. It is worse, Brother Powell, than being born a Baptist. My mother gave her life to that cause. I remember when she gave me wine to drink as a boy. The time soon came through an unfortunate experience of near relatives of an older generation when she took the other turn, and took

it with her whole heart, and the time came when rather than see me take anything intoxicating from her hand she would have cut it off. I mean what I say. She would have preferred to lose her right hand rather than to do it. Well, you know the result of that on me. I never would sign a temperance pledge, but I have never taken knowingly a drink of distilled liquor while she was alive and so far as I can now see, now that she is gone, I never will take one. (Applause.) I cannot bear to think of meeting her hereafter and telling her that I had done it.

Now, that's the background of sentiment, but it is not the reason I am a prohibitionist by any means. I don't know whether it is right or wrong as a matter of sentiment. I only know you cannot deal with it from that standpoint. I am not here to say that it is right morally, nor here to say that it is right religiously. I think the preachers and church people are making a mistake by insisting upon that. I don't find any prohibition in the Bible. Liquor had a pretty bad record in it. I suppose the first alcohol was made when the first apple or grape rotted in Eden. I don't know whether Adam and Eve ate rotten grapes or not. So far as I know it was first used when after the flood of waters Noah took a drink and brought shame upon himself. He turned on a spigot that released a flood of alcohol. It broke out in the family of Abraham. His nephew Lot went down to Sodom and formed the habit of drinking liquor, and you know the awful calamity and the fearful scandal in his family when through it he became the father of his own grandchildren. In the time of Moses it laid hold of the priesthood. You know what came to Nadab and Abihu. They caused the first prohibition law I have ever heard of, that of Moses, which commanded the priesthood not to drink, when they were on duty—a very conservative prohibition law. (Laughter.) The Mosaic prohibition was insufficient. You know that in the days of Isaiah, disregarding the warnings of Solomon, the people

of Israel became drunken, and their capital city in "its beauty was but a fading flower." We know that that thing was one cause of their downfall. We know that in Babylon it was a drunken king who lost his city without a stroke. But nowhere, even in the New Testament, can you find prohibition mentioned as prohibition. I want to say that John the Baptist was a total abstainer. His record is that he "drank neither wine nor strong drink." I cannot admit that his name was John Powell without destroying my faith in the power of heredity. (Applause.) But I don't think the Saviour was even a total abstainer. I don't think the situation in His day called for it. I find it stated that drunkards shall not inherit the Kingdom of God, and St. John says "they are without" in speaking of Heaven, but I find no command of total abstinence or prohibition. The Bible's foundation for total abstinence is, however, broad and secure, in that it says, "if eating meat maketh my brother to offend, I will eat no meat while the world standeth." That's the principle of total abstinence, if a man is not afraid of alcohol on his own account.

Prohibition is the child of concentrated alcohol. It is born of modern conditions. As distinguished from temperance or total abstinence, it is not a religious question. I don't know whether it is a moral question or not. I am not going to talk about it on either line. I will say that it is right politically. My brother, Powell, will have to get out of the Capital City Club, away from Atlanta, away from the Bar Association maybe, to find that out, but you can't judge public sentiment on Peachtree Street, or in Atlanta, or any such place as that. You can gauge public sentiment only by knowing the views of the silent majority. You cannot know it otherwise. How do I know that public sentiment is that way? Because nobody runs on a wet ticket. (Applause.) I know there is one exception in Georgia today. I know there is one bold, emphatic, I suppose, sincere, and possibly now enthusiastic, candidate on that ticket.



I am glad he is. For myself I wish they would run on that ticket everywhere. I don't know whether these things are right in many respects or not, but that's the way to find the judgment of the people on it. I would welcome a fair, free, open fight frankly made on issues of that sort. I think we need it. But I will tell you this about it. When a sane candidate starts out, he may be bewildered by what he sees in the city, but as soon as he starts out to run he is in the position of the young companion of that old prophet of Israel, who thought himself surrounded by his enemies until his eyes were opened. It is so with the candidate. He gets out, and his eyes are opened, and every wayfaring Ford becomes a chariot of fire, and every farmer a prohibition horseman of fire, and he feels the old prophet touch him on the shoulder and say, "my son, they that be for us are more than they that be against us." Of course that settles the question. The candidate gets on the water-wagon.

What I want to say to you, gentlemen, about this whole thing is to say seriously, and say it to you as officers of the law, that our only concern with it is, "Is it legally right"? My affirmation is that prohibition is legally right. What I mean by that is that there is a real evil which has been experienced for generations, experienced for all countries, that calls for treatment and for strong treatment. I mean that it is a serious injury not only to the soldiers and sailors, not only to the workers and the citizens, but to everybody who lives and breathes in a civilized community, and this injury is so great, so direct, and so long continued, that something must be done. We have tried a great many things, and have met with only a partial success. The latest experiment is nation-wide prohibition. I say it is legally right because it has been written in the Constitution of the United States, and nothing can be legally wrong which is legally there. I say it is legally right because, before it was there, the Supreme Court of the United States has so decided from *Mugler v. Kansas* 50 years ago down to the

present date; and every Supreme Court in the Union that ever held anything about it says it is legally right. It is within that great maxim spoken in English, "So use your own that you may not injure another's." The wisdom and beauty of that maxim is it has no noun in it. So use anything you have that you will never injure another's. That applies to the use of your body, your property, your liberty, or your liquor. It applies to your rights. Never use your rights so that you may injure another man's, woman's, or child's. That's the broad legal basis on which every single police regulation of the world must justly rest. Everyone has rights, but those rights must be within bounds; in social relations they to some extent must be sacrificed for others, and the question is always, "is the good worth the sacrifice"? Well, it is settled for us all as officers. We just need to remember that every American citizen is two men. When anybody is running for office, when an issue is up for a vote, we are sovereigns. Our aggregate will is or should be the law. It is not only our right but our duty to talk. It is our right and duty to exercise intelligent, manly, and courageous judgment, and vote accordingly, but, when the election is over, when the law is made according to the forms and methods we have ordained for making it, we cease to be sovereigns for the time being, and become subjects of the only king we have—our law! (Applause.)

Now, the corollaries from that are pretty broad. The law is our "boss." That's all we have to know, when we are given the job of carrying it out. Questions of wisdom and expediency are no longer ours to discuss. Ours is the job to do the best we can with it. Use your machine according to its capacity. See what it is good for, and let our "boss" pronounce it good or evil at the expiration of the time of trial.

Now, we must be faithful and just. There must not be any exceptions that the law does not make. There must not be any differences, that the circumstances don't justify.

I have no patience at all with a law for the poor man and none for the rich. I have no patience at all with a law for the helpless and none for the powerful. I have no respect for a court which is not even and exact, or making a sincere effort to be, in its administration of any law whatever. Of course circumstances alter cases. Of course that's why a broad discretion is vested in judges. Of course that discretion has to be exercised, but it should never be a corrupt discretion. Let it be nothing else except a conscientious and lawful discretion.

Another thing about it—we must be kind and considerate. I have no patience with a Jeffries in the enforcement of the law. Especially do I feel that way when I think that the vast majority of people who break the Volstead law or any similar law, are not real, genuine criminals as we generally understand it. Many of them have not been talked to and brought to understand the situation.

Every time I go into the mountains and talk to the people up there that thing is brought squarely home to me. Here's a young man; his people didn't see the thing like most of the people have seen it. He has been told that he is doing no moral wrong, and that what is not a moral wrong cannot be made a legal wrong. That's his idea about it. I have to tell him differently. I feel like it is a part of my duty. I have not sentenced a young man in my life that I didn't experience some feeling of fatherhood for him because I have a boy of my own. The women are beginning to understand it up there. Oh, how many of them come to beg a son or a husband out of jail, and I have asked them about it. They say, "we need him at home." I ask, "what was he worth to you at home the way he was going?" They would reply, "I must say it has been bad of him, but he won't do it any more." Most of them won't. Some of them will. The people I am talking about—most of them won't. I say it because most of them don't. For two and a half years I have sentenced people in the moun-

tains for infractions of this law. I have not counted them, but I suppose between one thousand and two thousand sentences have been imposed. You know the policy of enforcing the Volstead Act is a very light and moderate sentence for the first offense, and a severe one for the second. They have all been told about it and warned of it. Not a single prosecution in my district for a second offense has come before me yet. My first and only sentence of that sort was this week in Savannah.

Now, I am hopeful about that. I don't believe they have all quit. I know some of them will be going just the same route they went before; they may only be smoother; but I am hopeful that kindness, consideration, and the effort to establish some sort of human touch, will bear some fruit.

I want to tell you about the effect of kindness in Cherokee County. I don't know whether there is anybody here from Cherokee or not. I happened to be up there at Canton. That's one of the counties where law-enforcement officers have been elected on an anti-law-enforcement platform. The people of Cherokee County got ashamed of it. They decided that not only on those lines but on a great many others life in their county ought to be improved and could be. The thing started in just such a Baptist Sunday School class as Judge Evans prized above any feature of his life in Savannah. They said, "if Christianity is worth anything, it is worth more than we are making it worth. If the principles it teaches are worth anything practically, they ought to be put into practical operation. We want to clean up Cherokee County, but we don't want to prosecute one single soul. We don't want to report or tell on one single soul." You don't know how my heart springs to meet a program like that. I cannot bear a tale-bearer. They said, "Some of us know every one of these people. The thing to do is to treat them like friends. If we see the thing better than they do,

the thing to do is to try to show it to them like we see it." Some of them were manufacturers; some large farmers; some had jobs to give. To the man who said, "I am in this course of life because I need the money," they said, "the business is risky. You can't make money at it long, certainly not indefinitely. I will give you a job." In the man who was simply selfish and wanted to go his way, they tried to awaken some spark of manhood. If he had a wife and child, that had its influence on him. They tried to bring pressure to bear on him in a spirit of meekness, remembering the weaknesses of us all. That's the idea. The thing is taking. One hundred and seventy-five men in that little town of Canton at one time joined that movement. It is not a Christian organization. It is just a civic organization. Chapters have been established in other towns in that county. I had a letter last week from the president of it, saying it was working well, and they had the greatest hopes for their county.

My appeal is, not only to enforcement officers, but to good men and citizens everywhere, to please try to deal with the man who breaks the law, not like an animal, not like an outcast, but like a man. It does not matter about your opinion of the law, but only that it is law, and most legislators believed it was a good one or it would not have been one.

Law observance is the very best law enforcement. I think every man who has anything to do with the enforcement of the law is under the legal duty to keep straight himself. No judge or solicitor general can bring anything but contempt upon any law which he publicly and openly and perhaps boastingly violates. (Applause.) A man who takes an oath to uphold the constitution and laws of the United States, or the State of Georgia, is nothing short of a perjurer, if he does not make the best effort that is in him to observe them, and he cannot escape that responsibility. "But," you say, "I like my drink, and there is no

law against drinking." How are you going to get your drink when your supply gives out, unless somebody makes it and transports it? And they are not going to give it to you always. You cannot escape the fact that the price you pay is a bribe to him who makes, transports, and sells the liquor contrary to the Constitution and that the person who bribes the other fellow to break the law is just as guilty as the one who does so. And, Arthur, that's the trouble with the prohibition law. That, and not the law, is responsible for all this devilment that is going on. What makes all the devilment is the old-time selfishness and the old-time cupidity and the old-time resistance to this awful thing of hard work. I sentence young men for stealing automobiles and for raising checks and for embezzlement in the express offices and postoffices as well as for prohibition offenses, and most of those will tell me, "Judge, it was the only way I saw to make some money." Now, let me tell you, you are plainly wrong and you are taking the wrong view when you say that the prohibition law has made crime. It's the same old selfishness and cupidity and laziness that makes the breach of all laws. The more laws you have, the more offenses against them you have. I hate to say it, but behind much of it is the disinclination of the returned soldier to work. He may be out of a job, out of touch with his calling, perhaps in difficulties, but there's the trouble; and I very much fear that this indiscriminate soldier bonus is just going to add a little fuel to the flame. (Applause.) I am very much afraid that it is not only going to confirm them in the belief that they are entitled to be supported without work, but possibly confirm the habit of getting support that way.

I have been trying to talk about co-operation in spirit in an earnest desire to do what ought to be done. This thing of double conviction is one practical thing that comes to my attention. I think all courts have agreed that there is no double jeopardy. The Federal Constitution in giving

concurrent authority to Congress and the States gives no concurrent jurisdiction to courts, to enforce law. It gives concurrent jurisdiction to legislate, to make laws. When the laws of the United States and the laws of any State make it possible, however, under this concurrent authority to legislate for their courts to take jurisdiction of similar offenses under these separate laws, there is no doubt but that you are dealing with a man twice for the same transaction. Under the Federal law it is not the same offense and there is no double jeopardy, but no judge ought to be of such ferocious spirit that without good reason he would slap a double punishment on a man for the same transaction. (Applause.) I encourage the reporting of persons who have been punished in the State Court to the Federal Court for one reason only, that is, that they may register as first offenders, so that I can deal with them and tell them about that second offense. They are fined only some nominal sum in my court and they willingly plead guilty because it costs them less than to hire a lawyer. I don't know how you handle it in the State Courts, but I imagine the State Courts would not feel like punishing a man who had been really punished in the Federal Court. I think we ought to co-operate in the frankest effort at assistance to each other. We ought to turn over to each other any cases which seem to be better dealt with under the law of the United States or the State law.

Let's not break the Constitution as respects unreasonable searches and seizures in enforcing the law. There has been too much excess zeal about that. The law doesn't need any breach of the Constitution to enforce it. You had better break the law than to break the Constitution. I don't believe in this thing of reporting a case to the Federal Court because the State Officer can testify there. You can do that and he may have broken the State Constitution in a search, but he can testify in the Federal Court, and that does not seem to me to be on the right

line. Let's deal with offenders with full regard for their constitutional rights as fully as we do in civil cases, and stand or try to stand four-square on all the law, that we have got to administer.

In conclusion, may I give you a little illustration? They have turned over to us a water-wagon known as the Volstead water-wagon, and we are having rear axle trouble. That's where I diagnose it. Some think the axle is too rigid, that it ought to be of the "semi-floating type," mentioning light wines and beers in that connection. My suggestion is this: that we are just running a garage. We are not running a factory. We are not making automobiles, and we cannot change models. We will make this one run, if it will, and, if it won't run, we will do the best we can and leave it to the boss as to what we shall do next. Have you ever seen the differential in a rear axle? That is the thing which makes two wheels, that have "temporarily" slightly different duties, co-operate harmoniously. There is a social differential as well. It is along the line of kindness and conscientious co-operation. It is one of the oldest of its class. Moses started it when he said, "Love your neighbor as yourself." It was perpetuated, when the Master said, "Whatsoe'er ye would that men should do to you, do ye even so to them." It was even amplified when He said, "If any man compel you to go a mile, go with him twain."

Gentlemen, those are some of the gear wheels of our differential. We must not forget them. They have their force in legal affairs as they do in social and domestic affairs, and they absorb many a shock. There is no patent on them. Anyone may use them.

And after all, there is the dope. Many and many an automobile won't run well because you have not greased it. Let's put all the dope of cheerfulness and kindness and brotherly love into this proposition that we can and save the monkey wrench and the sledge-hammer for the man



who won't be reached in any other way. That is my notion of it. (Applause.)

Mr. Secretary, I guess you may set this speech down as entitled "Automobiles and Rear Axle Trouble," and I will give you as a text "Dope the differential." (Applause.)

## WHY A STATE JUDGE?

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ADDRESS BY

JUSTICE MARCUS W. BECK,  
OF THE SUPREME COURT OF GEORGIA

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It must occur at once to anyone hearing the question stated, Why a State Judge? that the question is subsidiary to the general question, Why a Judge? and that the question, if seriously considered, calls for a statement of some good, valid reason for the creation of a judicial office and the appointment or election of someone to fill that position. When I was informed by the Secretary of this Association that I had been selected to participate in a symposium having this question stated for its subject, I immediately concluded that the reason for the existence of a judicial office and of a judge was axiomatic, and that it would be proper to make a statement of that axiom in some formal way. And while I am still convinced that the reason is axiomatic, I have not been able to formulate the axiom, and finding myself unable to formulate the axiom, I sought assistance. I propounded the question to several learned judges, but received no serious answer. Then I began to search the pages of works left to us by the sages of the law. The first great work that I examined was Montesquieu's monumental work, *Spirit of the Law*. It occurred to me that in a work of this character, tracing the development of the law, the origin of laws and customs, the source of laws, discoverable in the nature of things and the breast of man,

that somewhere, succinctly and lucidly set forth, I would find an answer to the question. I do not mean that I read Montesquieu's entire work, but searched through the indexes to the work and the analyses of the same, examined each subject indexed that might contain a discussion of the question, but the answer was not found. In Blackstone's Commentaries we find the statement that the judges are the depositaries of the common law, and a discussion of their offices and duties, but no statement of the axiom for which I was hunting. After stating that the common law is divided into principal grounds or foundations, established customs and established rules and maxims, he adds, "But here a very natural and very material question arises: How are these customs and maxims to be known, and by whom is their validity to be determined? The answer is, By the judges in the several courts of justice. They are the depositaries of the law, the living oracles who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land." In the treatise on ancient law, and its connection with the early history of society and its relation to modern ideals, by Maine, there is no answer formulated to our question. A search through many other works, especially histories of English law, like those of Holdsworth and others, affords no satisfactory result. Of course, you can not read the commentaries upon the English law, the history of its progress and development, nor a general history of England or other civilized countries, without finding and accumulating material which would afford the broad foundation for a thesis upon the subject of judges as a necessity in the maintenance of civilization, the establishment of liberty and the administration of justice.

The institution of the office of a judge, with the authority, power and jurisdiction with which he is now clothed and the duties with which he is charged under modern systems of jurisprudence, such as prevail in all civilized lands, is an experiment, and the last in a long line of experiments made,

hit upon, or developed to do justice between man and man and between society and the individuals composing it, to redress particular acts of wrong and afford relief in particular cases of invasion of rights, to afford redress for injuries and apply the sanction of the law in cases of offense against society and the State. We cannot conceive of the establishment and perpetuation of property rights, the restraint upon crime, of the decisions of controversies growing out of contracts and their violation, without courts, or tribunals judicial in their nature; nor of such tribunals, without judges. We cannot conceive of the proper application of the law underlying rights and providing for the punishment of offenses against society, without the existence of a judge, who knows the law and is clothed with the authority to administer it and apply it to the facts of each particular case. The earliest glimpse that we have of men set apart or designated as judges clothed with judicial authority in their attempts to administer justice, is in that state of development of the human race where we cannot determine whether the rules of conduct and of action sought to be applied by the so-called judges could properly be called law, or theology. In the very dawn of civilization, after the head of a family or the head of a tribe ceased to be the absolute judge and lawmaker for his family or his clan, and society began to take on a form somewhat similar to that which it now has, we find all power, judicial, executive and legislative, vested in one man, and then as society progressed, a division of these powers, and in the further progress the establishment of courts and judicial systems. But between the date of the exercise of absolute, universal, arbitrary power by one man, the absolute king, and the date when courts were established, with the functions and jurisdiction which they now have, there was the lapse of centuries, and almost innumerable experiments in the manner of settling controversies between man and man, between society and the individuals composing it; and it would be extremely interest-

ing to examine these, but such an examination would lead us far afield and utterly beyond the scope of the discussion in a symposium like this; and we must content ourselves with stating them, leaving it to your memory of the historical development of the law or to your further investigation of the subject, to verify our conclusion that out of the trial of the various experiments, establishing rights, fixing the responsibility for wrongs, and punishment of crimes, grew the perception of the necessity of judicial tribunals, and of judges as an essential part of such tribunals. And while we do not attempt even a most meagre description of the various experiments in the administration of justice, we may refer to one or more of them so as to bring them into contrast with that system of jurisprudence which recognizes the judges as a necessity and the repository of the principles to be applied on controversies coming up for settlement. In brief but lively and interesting narrative, Blackstone describes for us certain trials, the result of which might determine property rights or inflict upon one of the parties the sanction of the law. In chapter 27, Book IV of his commentaries, he says: "The most ancient species of trial was that of ordeal; which was peculiarly distinguished by the appellation of *judicium Dei* (the judgment of God); and sometimes *vulgaris purgatio* (common purgation), to distinguish it from the canonical purgation, which was by the oath of the party. This was of two sorts, either fire-ordeal or water-ordeal; the former being confined to persons of higher rank, the latter to the common people. Both these might be performed by a deputy; but the principal was to answer for the success of the trial; the deputy only venturing some corporal pain for hire, or perhaps for friendship. Fire-ordeal was performed either by taking up in the hand, or else by walking barefoot and blindfolded over nine red-hot ploughshares, laid lengthwise at equal distances; and if the party escaped being hurt, he was adjudged innocent; but if it happened otherwise, as without

collusion it usually did, he was then condemned as guilty. Water-ordeal was performed, either by plunging the bare arm up to the elbow in boiling water, and escaping unhurt therefrom; or by casting the person suspected into a river or pond of cold water; and if he floated therein without any action of swimming, it was deemed an evidence of his guilt; but, if he sunk, he was acquitted. It is easy to trace out the traditional relics of this water-ordeal, in the ignorant barbarity still practiced in many countries to discover witches by casting them into a pool of water, and drowning them, to prove their innocence." The instances of trial in this manner and by this means, given by the distinguished author are interesting, but we must forbear the statement of them. The commentator expresses his astonishment at their folly and impiety, but informs us that "in England, so late as King John's time, we find grants to the bishops and clergy to use the *judicium ferri, aquae et ignis* (the judgment of iron, water, and fire)." He enumerates also other forms of trial as the trial by battle, and sets forth the procedure; of course, denouncing that also as a means of obtaining true results. We will not even attempt to enumerate the different species of similar trials given in the work referred to. We merely refer to the fact that trial by battle was used also as a means for the determination of civil rights. But in civil actions the trial by battle was carried by champions, and not by the parties themselves; the reason being for the substitution of champions that if either party to the dispute should be killed "the suit must abate and be put at end for the present; and therefore no judgment could be given for the lands in question, if either of the parties were slain in battle." It is astonishing to recall that instances of such trials were not unknown in the days of Queen Elizabeth. And the very mention of trial by ordeal necessarily carries us back to Moses and the Levitical laws, where we are told of the ordeal to which a married woman might be submitted upon the complaint of her jealous husband,

and the direful result to her in case she was guilty. These methods of trial, indications of aspiration for the administration of justice between man and man, and the utter impotency of such procedure to bring about the desired results suggest an answer to the question, Why a Judge?

In the brief passage first quoted from the commentaries of Sir William Blackstone, declaring that the judges in the several courts of justice are the living oracles who must decide in all cases of "doubt" and that they must decide according to "the law of the land," are found two expressions that broadly answer the question, "Why a Judge?" and those two expressions are "doubt" and "the law of the land." The judicial power of the United States extends to all cases in law and equity arising under the national constitution, the laws of the United States, and in certain other enumerated cases. But the constitution of the United States also assumes and recognizes the existence of distinct State governments, and every State has, besides its constitution, its body of laws, prescribing the rights, duties and obligations of persons within its jurisdiction and establishing numerous rules for the various relations of life, which cannot be properly incorporated in the constitution and are left to the regulation of the ordinary lawmaking power. These State constitutions and the laws passed in consonance with them, together with the judicial interpretation and construction of them, are a part of the law of the land; and where doubt arises to the meaning, interpretation, construction or applicability to a given case of any one or more of the countless provisions contained in this body of laws, there is to a certain extent an answer to the question, Why a State Judge? There are in the Code of Georgia, including the Penal Code, something like 8,000 sections, each one embodying one or more distinct statutory provisions declaratory of rights and fixing limitations affecting relations of individuals and their various relations as members of a

family or members of society, establishing methods of procedure in the courts, defining crimes and misdemeanors, and fixing punishment for the violation of such penal statutes; and whenever doubt arises as to the interpretation or construction of any one of these thousands of statutory declarations, where it is sought to have them applied to the establishment of right or the redress of wrong in any one of the thousands of cases, or there is a question as to the applicability of the law to a particular case, the question assigned as the subject of these papers is answered, without being asked. It may not be true that no statute is drawn so clear and plain that doubt can not be raised as to its meaning and that the rules for the interpretation of statutes need not be invoked to ascertain its real meaning; but it seems to be true as to the great majority of our legislative enactments that there exist plausible grounds for differences of opinion as to their meaning. The Supreme Court of this State, leading all other courts of last resort in the Union in the number of cases decided, has been called upon to decide between 30,000 and 40,000 cases, in each one of which it was shown that not only counsel for the parties in the court differed as to the meaning and interpretation of the laws, or the proper application to the cases in hand, but that they were of the opinion, even after the decision by the court below, that the trial judge had not reached a proper conclusion. Section 2780 of the Civil Code, declaring a railroad company liable for damages done by the running of its locomotives, cars, etc., contains six lines. In Park's Annotated Code the enumeration of the cases, with the briefest possible digest of the rulings made by the Supreme Court and the Court of Appeals, fills over twenty-five pages. The catchwords alone in the annotations make it look like a law dictionary. And yet, section 2780 is a perfectly plain statute; it declares in simple words, used in their ordinary meaning, that a railroad company shall be liable for any damage done to persons or to property by the running of



the locomotives, cars or other machinery of the company, or for damage done by any person in the employment and service of the company, unless the company shall make it appear that it has exercised due care and diligence. Numerous other statutes might be cited that even more strikingly illustrate how easily doubts may be engendered as to the provisions contained in the law of the land. That very expression, "law of the land," or "due process of law," has been the source of so much judicial interpretation, explanation and construction because of the variety of cases in which the applicability of the constitutional provisions guaranteeing due process of law has been asserted or denied, that if all that has been written regarding it by text-writers and in judicial decisions containing expositions of its meaning and demonstrations of its applicability or non-applicability to the cases in hand were published in one series of volumes under some appropriate title, it would make a library of respectable size. Doubts as to the constitutionality of statutes enacted by the legislature and the inherent power of the courts to so hold them, give rise to an infinite variety of attacks on the statutes. No statute can be so recent as to be exempt from such attacks, and none can be so venerable. The "blow-post law" (Code 2675-2677) stood on the statute books of this State for sixty-five years; it was hoary with age; and then in the case of *Blackwell v. Seaboard Air Line Railway* the defendant attacked this law on the ground of its unreasonable interference with interstate commerce and as being in violation of the provisions of the Federal Constitution delegating to Congress such regulatory powers. The Supreme Court of this State (*Seaboard Air Line Railway Co., v. Blackwell*, 143 Ga., 237) held that the law did not violate that provision of the Federal Constitution (Art. I, Sec. 8, Par. 3, Code, § 6644). But upon review of this question in the Supreme Court of the United States, that court held that, "That provision of the 'Blow-Post' law of Georgia (Civil Code, 1910, §§2675-2677), which requires

railroad companies to check the speed of trains before public crossings so that trains may be stopped in time should any person or thing be crossing the track there, is a direct and unconstitutional interference with interstate commerce as applied to the state of facts specifically pleaded by the defendant interstate carrier in this case." (244 U. S. 310.) So the statute went down. What an astonishing variety of attacks can be made on a single statute or upon an ordinance passed by the legislative body of some municipality! What doubts as to the law of the land may arise when the interest of some individual is actually or supposedly affected adversely by a statute or an ordinance! In the case of *Hazleton v. City of Atlanta* (147 Ga. 207), in which the validity of an ordinance of the city of Atlanta was brought in question, it appears that an ordinance of the city regulating the operation of vehicles known as "jitney-busses" and requiring the giving by the person operating such vehicles of an indemnity bond and the payment of a license fee, was attacked as invalid because, so it was alleged, it violated certain statutes of this State and certain specified provisions of the State and Federal Constitution. In this case the ordinance referred to and its different provisions were made the subject of something over two hundred attacks, based upon as many separate grounds, and it was contended in the equitable petition filed for injunction to restrain the enforcement of the ordinance that it was void and invalid for certain reasons pointed out. These were based upon the contentions that it violated certain statutes of the State in certain respects designated, numbering some sixty or seventy—that it violated the Constitution of the United States in a hundred different ways, and violated the Constitution of the State of Georgia over half a hundred times. No doubt, certain statutes of the State have been affected, according to the contentions of certain counsel, with even a larger number of vices. But this ordinance that we have referred to, if it had been fairly open to the charges made

against it, was the most sinful ordinance that was ever passed. The Supreme Court, after considering all of them found the ordinance not guilty. I may add, that it will be seen from the reports of the case in the 143 and 147 Georgia Reports, that most of the constitutional objections to the ordinance were dealt with in bulk. Distinguished counsel of recognized ability appeared for all of the parties to the case.

Especial reference is made to cases in which attacks are made upon laws as being unconstitutional and in violation of the law of the land, because they seem to exemplify with more force the necessity for a judge than cases between individuals where the construction of a statute or its applicability to the facts of a particular case are brought in question. In the one class of cases the mere rights of individuals are brought in question, or the issue as to whether some particular individual is guilty of the violation of the penal laws; in the other class of cases the supremacy of the law of the land is challenged or asserted.

For many years after the establishment of the Supreme Court of this State attacks upon laws on the ground that they were unconstitutional were somewhat rare. If one will glance through the digests of the reports from the 1st Georgia Report up to the 40th or 50th, it will be seen that in each of the volumes up to that number are to be found only two or three cases in which constitutional questions were raised for decision, and in several of the volumes it appears there is no case in which an attack is made upon the constitutionality of a statute. When we reach the 70th or 75th Georgia Report—about the middle of the series—the number of such cases in each volume will have increased to ten or fifteen; and now there is rarely a term at which the number of such cases does not amount to twenty-five or thirty. In the last forty volumes of the Georgia Reports there are more than ten times as many cases raising constitutional questions as there were in the first forty volumes.

And cases of his character are increasing rapidly from year to year. The reasons for this increase are manifest. The number of statutes passed at each session of the legislature is increasing; and the interests which are affected by these statutes, whether they are general laws or local laws, are also increasing in number and increasing very greatly in magnitude. As these laws are passed and become effective, they are closely scanned by individuals and corporations whose interests are adversely affected by them, or upon whom additional burdens by way of taxation are laid. They are scrutinized section by section and burdensome provisions are, wherever ground therefor can be found in the constitution, challenged and attacked. Every one of these attacks creates new problems for the court and new tasks to be discharged by the judges; and in the discharge of these duties and in the solution of these questions new answers are given to the question, Why a State Judge? Interesting statistics might be adduced here as to the increase in the number of statutes, the multiplication of laws and the multiplication of problems for the judges. Such statistics and figures, however, would probably present facts that are known in a general way to all the members of this association. Of our State judges it may be said, paraphrasing the expression quoted above from Blackstone, the customs and maxims and principles which make up the common law were to be known and their validity to be determined by the judges in the several courts of justice. We may say that all these State statutes and the decisions upon the question of their validity or invalidity already rendered are to be carried in the breast of the State judges. In the month of June every year the legislature of Georgia assembles, and immediately after its organization there is literally a flood of new bills to be enacted into law. Many of these, like the seeds of the sower, fall by the wayside, and many of them fall—I will not say upon good soil—but certainly upon very productive soil, and bring forth

some thirty fold, some sixty fold and some an hundred fold in the way of lawsuits and serious controversies; each with a crop of new questions, that makes the judge a necessity.

I do not know how many members of this body have read a report of the proceedings of the Constitutional Convention of 1877, giving in full the debates on all questions before the convention, as reported by Mr. Sam W. Small; but surely no Georgia lawyer who has read the debates on the questions relating to the judiciary could fail to find in all of them most interesting matter. No doubt more philosophical and comprehensive and juster views of courts and the judiciary and their places in the government of all civilized States can be found in the writings of distinguished authors who have made such matters the subject of their treatises; but in the debates to which I have referred are to be found views of Georgia lawyers and laymen, gathered together to frame a constitution of the State, upon the subject of courts and judges—views which, if not elegantly expressed, are in many cases forcibly and in some cases violently set forth. Sometimes the participants in this debate were in favor of extending the power of the judiciary, others in favor of curtailing it, and still others in favor of leaving it as it was at that time. In connection with one restrictive provision a more liberal-minded member of the convention offered a resolution that nothing in the proposed restrictive clause "should be so construed as to prevent judges from being present at the trial." And another liberal minded member, in connection with the different proposals to fix the salary of superior court judges, wherein the amount of the salary ranged from \$1,600.00 to \$3,000.00, offered a resolution providing that in addition to their salaries "the judges of the superior courts of this State shall be allowed to peddle without license while they are on the circuit, and that one-half of the net profits arising from said business be paid into the treasury of the State, and no legislature shall

have the power to revoke or impair this special immunity. They shall be compelled by law to keep an itemized account." I do not recall whether either of these resolutions were voted upon or not; certainly the last one mentioned did not find a place in the constitution. And if the other is not there embodied in its actual form as presented, it is there in effect, and judges are not only permitted to be present at the trial but are required to be present at trials at all stages thereof. That question has been taken up and seriously discussed and solemnly adjudicated in more than one case decided by our Supreme Court, some of these decisions being supported by quite a wealth of authority; from a perusal of which I infer that judges are a necessary part of the court. In the case of *Horne v. Rogers*, 110th Georgia, it was said: "If it were an open question, we would hold that the presence of the judge at all stages of the trial is absolutely necessary to its validity, and that the absence of the judge from the trial without suspending the same for any length of time, no matter how short, or for any purpose, no matter how urgent, would vitiate the whole proceeding, whether objection was made by the parties interested or not, and whether injury resulted to any one or not. The judge is such a necessary part of the court that his absence destroys the existence of the tribunal, and public policy demands that the tribunal authorized to pass upon the life, liberty and property of the citizen should be constituted during the entire trial in the manner prescribed by law. The great weight of authority is in harmony with this view. The very definition of trial carries with it the idea of the superintendence of a judge." In the case of *O'Shields v. The State*, 81 Ga. 301, it was said that, while a new trial would not be granted in that case, no motion for a mistrial having been made, it was improper for the judge to be out of the court-room for even "two or three minutes" during the argument of counsel in a criminal trial.

Many other ruling of similar forcible import, both of our courts and the courts of other States might be quoted.

I do not recall that in reading the debates in the Constitutional Convention relative to the courts and the judiciary I found any one of the members had propounded the question, Why a Judge, or Why a State Judge; but the question as to "Why a Supreme Court" was more than once raised, and that question was debated seriously. The distinguished member from Fulton, Mr. Hammond, argued with ability and at length the necessity of the court and of increasing the number of judges and their allowance of an adequate salary; and he did this with so much vigor that certain other delegates who took opposite views questioned his patriotism and intimated doubts as to his sympathy with the taxpayer.

I do not care to say more as to why there should be, must be, will be courts and judges. Every page of the history of civilized people answers, in part at least, such question. It is not out of place to remark that, the more highly civilized a people the more frequent are the references to the courts and judges, their particular province and jurisdiction, their powers, the restriction upon the powers, or the enlargement of their powers. In any chapter of English history, from the time of Alfred to the present day, are references, direct and indirect, to courts and judges. In the history of despotic government, such references are rare. There is a reason, and it would be interesting to discuss it, but it is not within the scope of this paper. In Rambaud's great history of Russia, the word "judges" is mentioned less than a half dozen times in the first half of his history, and rarely in the second half, and but little is said of the judiciary when it is mentioned. This simple fact gives rise to interesting speculation, but it can not be indulged here.

Allow me to conclude with a quotation from Judge Story on the subject of the judiciary. It is brief but com-

prehensive, and in general answers the main question which we have had to consider. He says in discussing the judiciary, "The importance of the establishment of a judicial department in the national government has been already discussed . . . . And every government must, in its essence, be unsafe and unfit for a free people where such a department does not exist with powers co-extensive with those of the legislative department. Where there is no judicial department to interpret, pronounce, and execute the law, to decide controversies and to enforce rights, the government must either perish by its own imbecility, or the other departments of government must usurp powers, for the purpose of commanding obedience, to the destruction of liberty."



# THE POSITION OF THE FEDERAL COURTS IN THE JUDICIARY OF THE COUNTRY.

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PAPER BY  
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When the invitation was received to take part in the Symposium—"Why is a Federal Judge"—the first thought which it evoked was, could we conceive of a government for the United States without a system of Federal courts?

What would have been the course of public events had the Federal Constitution not provided a judicial system, it is difficult to forecast.

Bryce in his *American Commonwealth* says:

"When in 1788 the loosely confederated States of North America united themselves into a nation, national tribunals were felt to be a necessary part of the national government. Under the Confederation there had existed no means of enforcing the treaties made, or orders issued by the Congress because the courts of the several States owed no duty to that feeble body and had little will to aid it."

The necessity for tribunals of wider jurisdiction than could be exercised by the State courts was perceived even under the old Confederation.

The Articles of that compact contain the beginnings of the Federal judicial system. Article nine thereof conferred upon "the United States Congress . . . . the sole and ex-

clusive right and power of . . . . appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally all cases of captures, provided that no member of Congress shall be appointed a judge of any said courts." This Article also declared—

"The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever."

Provision was made for the presentation to Congress by petition of the matter in question, and for the formation of a court composed of commissioners, or judges, whose decision should be final. If any of the parties refused to submit to the authority of such court, or to appear or defend, the court should still proceed to judgment, which was declared to be final and conclusive. The sentence and proceedings were to be transmitted to Congress and lodged among its acts "for the security of the parties concerned;" but no power of enforcement is suggested. Controversies concerning the private rights of soil claimed under different grants of two or more States, under certain conditions, were on petition of either party to the Congress to be determined in like manner as was prescribed for deciding disputes between States respecting territorial jurisdiction.

Under these grants of power, courts had been constituted, notably "The Court of Appeals in Cases of Capture," (Sixth Journal of Congress, 14, 21, 75), which had exercised jurisdiction. *Penhallow v. Doane*, 3 Dall. 54, 62.

But the want of sufficient judicial system and the inability to deal directly with individuals, under the Articles of Confederation, were recognized as fundamental defects.

As is said in the *Federalist*, No. XXII,

"A circumstance which crowns the defects of the Confederation remains yet to be mentioned—the want of a

judiciary power. Laws are a dead letter, without courts to expound and define their true meaning and operation. The treaties of the United States to have any force at all, must be considered as a part of the law of the land. Their true import, as far as respects individuals, must like all other laws be ascertained by judicial determination. To produce uniformity in these determinations they ought to be submitted, in the last resort, to one SUPREME TRIBUNAL. And this tribunal ought to be instituted under the same authority which forms the treaties themselves. . . .

"The treaties of the United States under the present constitution are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures. The faith, the reputation, the peace of the whole Union are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which it is composed. Is it possible that any foreign nations can either respect or confide in such a government? Is it possible that the people of America will longer consent to trust their honor, their happiness, their safety, on so precarious a foundation?"

That this was not merely an anticipated trouble had been shown by the admitted disregard by the States of the Confederation of engagements made by the Confederation in its treaties and embarrassments which such disregard entailed on the government existing under the Articles of Confederation.

Another reason for the creation of a Federal judiciary was to provide a means for giving to the Federal government the final decision of whether the laws of the States were or were not obnoxious to the Constitution of the United States. At one time it was proposed in the Convention which framed the Constitution that the Congress should have a veto of State legislation. As a substitute for this, the provision of the Constitution declaring the Constitution and laws made pursuant thereto, and treaties made under the

authority of the United States, shall be the supreme law of the land, was adopted and a Federal judiciary provided, whose decisions would be controlling in any conflict between State laws and the Federal Constitution, laws and treaties, when such questions were judicially raised.

When the Constitution of the United States was being framed, it appears to have been recognized on all sides that a Supreme Federal Court was necessary; the only controversy was as to whether courts of the United States, inferior to the Supreme Court should be provided, or whether such jurisdiction could not be exercised by the State courts.

It was this divergence of opinion as to the necessity for inferior Federal courts that dictated the provision of the Constitution which made their creation by the Congress permissive and not mandatory, as is shown by the language creating the Federal judiciary—

“The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.” Constitution of U. S., Art. III, Sec. 1.

The great weight of opinion, however, was that it would not be safe to rely on the courts of the States to administer the National laws and hence that Congress should be authorized to create inferior tribunals. Farrand's Records of the Federal Convention, (Madison Papers), pp. 45, 46.

Bryce gives succinctly the reasons for the creation of a Federal judicial system as follows:

“Now that a Federal legislature had been established, whose laws were to bind directly the individual citizen, a Federal judicature was evidently needed to interpret and apply these laws, and to compel obedience to them. The alternative would have been to entrust the enforcement of the laws to State courts. But State courts were not fitted to deal with matters of a quasi-international character, such as admiralty jurisdiction and rights arising under treaties. They supplied no means for deciding questions between different

States. They could not be trusted to do complete justice between their own citizens and those of another State. Being under the control of their own State governments, they might be forced to disregard any Federal law which the State disapproved; or even if they admitted its authority, might fail in the zeal or the power to give due effect to it. And being authorities co-ordinate with and independent of one another, with no common court of appeal placed over them to correct their errors or harmonize their views, they would be likely to interpret the Federal Constitution and statutes in different senses, and make the law uncertain by the variety of their decisions. These reasons pointed imperatively to the establishment of a new tribunal or set of tribunals, altogether detached from the States, as part of the machinery of the new government. Side by side of the thirteen different sets of State courts, whose jurisdiction under State laws and between their own citizens was left untouched, there arose a new and complex system of Federal courts. The Constitution drew the outlines of the system. Congress perfected it by statutes; and as the details rest upon these statutes, Congress retains the power of altering them."

The jurisdiction of the Federal courts provides for the decision of the following classes of cases:

1st. Those arising under the Constitution and laws of the United States, thus providing for uniform interpretation and enforcement of the National Constitution and laws.

2nd. Cases arising under the treaties made by the United States and cases affecting Ambassadors, other public Ministers, and Consuls; that is such litigation as is likely to involve our international relations.

Closely allied to this are cases of admiralty and maritime jurisdiction of which the Federal courts are given jurisdiction.

3rd. Controversies to which the United States shall be a party.

4th. Controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under the grants of different States, and between a State, or citizens thereof, and foreign states, citizens or subjects.

The purposes of these classes of cases are respectively to furnish a tribunal which would insure non-interference by State action with foreign relations; which, because of the international character that inheres to many admiralty and maritime causes, would vest jurisdiction thereof in the courts of the nation; which would provide a tribunal for litigation by the States, or between citizens of different States; of litigation over land claims involving conflicting grants from different States; and of litigation with aliens, as free from local influences as could be devised. This last jurisdictional grant was intended also to keep down questions between the several States and foreign governments such as at times arise between foreign countries.

Time will not permit an extended review of the development of this system and of the part it has played, and now occupies in the evolution of the country.

A very recent decision involving the boundary between the States of Texas and Oklahoma illustrates what might take place if there was no Federal tribunal which could settle such controversies as arise between the States of the Union.

The boundary between Texas and Oklahoma is the Red River. This stream is one which shifts its bed at intervals in a wide, sandy valley, and where it ran in 1819 when the Northern boundary of Texas was defined by treaty with Mexico was a matter of dispute. A wide tract was involved in the conflicting claims of the two States as to their proper boundary. Oil and gas were discovered in the disputed territory; conflicting claims of individuals had arisen. The opinion of the Supreme Court of the United States recites—

"that possession of parts of the bed was being taken and held by intimidation and force; that in suits for injunction the courts of both States were assuming jurisdiction over the same areas; that armed conflicts between rival aspirants for the oil and gas had been but narrowly averted and still were imminent; that the militia of Texas had been called to support the orders of its courts and an effort was being made to have the militia of Oklahoma called for a like purpose; that these conflicting assertions of jurisdiction and the measures taken to sustain them were detrimental to the public tranquility, were of general concern and were likely to result in great waste of oil and gas and in their extraction and appropriation to the irreparable injury of the true owner of the area in dispute, and that unless these minerals were secured and conserved by means of wells drilled and operated in that area there was danger that they would be drawn off through wells in adjacent territory pending the solution of the controversy over the state boundary and the title to the river bed."

Under these circumstances the jurisdiction of the United States Supreme Court was appealed to and the threatened conflict between the States was arrested. Had there been no Federal tribunal with power to act the consequences might have been most serious.

The entire change in methods of communication between the different parts of the country has produced a much more intimate relation between the Federal government, including its courts, and the life of the local communities.

As one instance, let us consider the part which the Federal courts have borne in the control of interstate commerce by the general government. The case of *Gibbons v. Ogden*, (9 Wheaton 1), is epochal in its character if we consider what would have been the result had there been no Federal Supreme Court to assert the paramount control of Congress over interstate commerce.

Robert Fulton and Livingston were claiming the exclusive privilege to run steamboats in New York waters under a license from the State of New York. This claim had been sustained by Chancellor Kent in the case of *Livingston v. Van Ingen*, (9 Johnson Rep. 589). Ogden, an assignee of Fulton and Livingston, sought to enjoin one Gibbons, who was operating a competing line of boats under a coasting license of the United States. The courts of New York granted the injunction, but on writ of error the United States Supreme Court maintained that the control of Congress was paramount over the subject, as involving interstate commerce, and that the coasting license of Gibbons gave him the right to navigate the New York waters. In deciding the *Gibbons* case, the Court laid down general rules upholding the complete control of Congress over all interstate and foreign commerce.

The definition there given to the extent of this control is what makes the decision of such importance. It was there held that such control extended not only to the interstate interchange of commodities; but embraced all of the instrumentalities for such commerce. That it would include means of intercommunication unknown at the time when the Constitution was adopted. Under this interpretation the regulation of interstate transportation, the enactment of safety appliance acts, employers' liability acts, and workmen's compensation acts, as to employees engaged in interstate commerce, have been enacted and sustained.

The control over interstate commerce through the Sherman Anti-Trust Act, the Clayton Act, and the Federal Trade Commission has followed this early declaration of the Federal courts of the control by the United States over interstate commerce.

It is quite evident that had there been no Federal court to place this construction on the Constitution, and a construction which would have shorn the Federal government of much of the power it has exercised had resulted, it would



have entailed a corresponding hindrance to the development of the magnificent transportation systems and the splendid commerce that pours over them, which has contributed so much to our growth and prosperity.

The decision of the United States Supreme Court in *McCullough v. Maryland*, (4 Wheaton 316), holding that the Federal government could create a bank, followed by the legal tender cases, are the foundation for the present systems of banks of issue and of our currency system, for the Farm loan banks, and for many of the agencies maintained by the Federal government in our financial life.

The doctrine there asserted that while the powers of the Federal government are limited, "let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional," has brought about an ever widening activity of the Federal government in our economic life. (*Ib.* 421.)

It should be noted that the Federal courts, other than the Supreme Court, depend on the grant of Congress for the jurisdiction which they can exercise, and a case may be one, jurisdiction whereof might be conferred, but which these courts cannot entertain unless conferred.

The original lines of jurisdiction of the United States courts inferior to the Supreme Court appear to have been founded on the belief that justice between certain parties could be better secured by providing Federal tribunals for the trial of cases of the several classes jurisdiction over which is vested in the Federal courts. Hence the amount involved necessary to confer jurisdiction for original proceedings in such courts, or by removal to such courts, was made small, and from time to time the class of cases removable from State courts to the United States courts was enlarged.

The Act of March 3, 1875, expressed probably the

**greatest extension of Federal jurisdiction in civil cases which has been granted.**

The Act of 1887 and subsequent legislation have however shown a change in the direction of limiting the volume of the cases to be brought and decided in Federal courts.

That Act, and subsequent amendments, have provided as requisite for the exercise of jurisdiction at law or in equity in the Circuit, now District Court of the United States that the controversy should involve a principal amount exceeding \$3,000. This applies to cases arising under the Constitution and laws of the United States, as well as to those founded on diverse citizenship, and relegates all involving a less amount to the State courts.

They have also placed restrictions on the courts of the United States in which such suits should be brought and restricted the removability of cases.

Congress also has forbidden suits under the Federal Employers' Liability Act from being removed into the United States courts even where diverse citizenship exists between the parties thereto, and has declared that incorporation of a railroad corporation under a Federal statute shall not be sufficient to give jurisdiction to such courts, of suits by or against it, as arising under a statute of the United States, as had theretofore been the case.

On the other hand, the tendency to extend jurisdiction over subjects of such wide range that State action seems to be insufficient for their control has appeared. The abolition of lotteries through forbidding the use of the mails to papers carrying advertisements thereof, the punishment of frauds conducted by the use of the mails, the Mann White Slave Act, the Harrison Narcotic Act, and similar enactments; together with the enactment of the Eighteenth Amendment and the congressional legislation pursuant thereto, all point to a tendency to vest increased jurisdiction in the Federal courts, either by direct conference of new

powers or by the extension of old powers under the decision of the courts, to such spheres as the growth of the country and its closer intercourse point to as calling for a uniform course of legislation and enforcement by the courts for which the restricted territorial jurisdiction of the State tribunals, or adversary local influences, make the State courts inefficient.

As distance is reduced by more speedy means of transportation and the practically immediate transmission of information provided for, the size of the country for practical purposes is reduced and the tendency to ignore State lines is likely to grow rather than to diminish.

The system of procedure in the Federal courts, except at law, is uniform throughout the United States. A Bill, backed by the recommendation of the American Bar Association, has been presented to Congress which would authorize the Supreme Court of the United States to prescribe uniform procedure at law for the Federal courts. While it has been slow of passage, it will ultimately be adopted. The result of such uniform practice throughout the country will be to influence the practice of the several State courts and bring about a similarity of procedure in the several State courts.

One of the surprising things to foreign publicists is the operation throughout the same territory of two systems of courts, exercising, in the great majority of cases, concurrent jurisdiction, without conflict, and even in cases where a conflict of jurisdiction does arise, with orderly procedure for settling such differences.

Where the construction or application of the Constitution, a statute, or a treaty of the United States is involved, the decisions of the Supreme Court of the United States are controlling on the courts of the State.

In like manner the construction by the courts of the State of the Constitution and statutes under the State Constitution is binding on the Supreme Court of the United States

and all Federal courts, and will be followed even to the extent of reversing a former contrary opinion. Where the litigation involves the possession of property that court which first takes control is recognized as the court in which the possession shall remain and that possession draws to it the right to decide all questions affecting the property. In personal suits the pendency of a suit in the State or Federal court is no bar to a suit in the other court, where suit in one State would be no bar to a suit in the courts of another State. From an early period in its history, the Supreme Court of the United States announced the doctrine that the decision of the State supreme courts would, where no conflict with the Federal Constitution or laws was involved, be followed by the courts of the United States. Chief Justice Marshall in the case of *Elmendorf v. Taylor*, (10 Wheaton, 152, 160), thus states the position. After announcing that the courts of any country were the appropriate organ to construe its legislative acts, he says:

"On this principle the construction given by this Court to the Constitution and laws of the United States is received by all as the true construction; and on the same principle the construction given by the courts of the several States to the legislative acts of those States is received as true unless they come in conflict with the Constitution, laws or treaties of the United States."

Or as said in a recent case, (*Memphis Street Railway Co. v. Moore*, 243 U. S. 299, 301), of the construction of a State statute by a State supreme court,

"No conflict with the Federal Constitution or laws being involved, this construction of the State statute will be accepted by this Court as conclusive."

All who had the privilege, remember with pleasure the able paper of President Lawton at the last meeting of this Association on the case of *Padelford, Fay & Company v. Mayor and Aldermen of Savannah*, (14 Georgia 438), in which Judge Benning of that court announced that "the Su-

preme Court of Georgia is co-equal and co-ordinate with the Supreme Court of the United States, and therefore the latter cannot give the former an order, or make for it a precedent."

The present relation of these respective jurisdictions has found no fuller expression than in the later decision of our Supreme Court in *Wrought Iron Range Co. v. Johnson* (84 Georgia, 754, 759), which states:

"The doctrine of co-equality and co-ordination between the Supreme Court of Georgia and the Supreme Court of the United States so vigorously announced by Benning, J., in *Padelford v. Savannah*, 14 Ga. 439, regarded now from a practical standpoint, seems visionary. Its application to this, or any like case, would be a jarring discord in the harmony of law. Moreover, any attempt to apply it effectively would be no less discordant. When we know with certainty that a question under the Constitution of the United States has been definitely decided by the Supreme Court of that government, it is our duty to accept the decision for the time being, as correct, whether it coincides with our own opinion or not. Any failure of due subordination on our part would be a breach, rather than an administration of law."

But, while the Federal courts fill an important and necessary position in the judicial system of the country, they would be wholly insufficient for the enforcement of law but for the existence in the same territory of the judiciary of the States. Let it never be forgotten that on the State courts rests the greatest burden of the enforcement of law, of the maintenance of public justice, of the decision of private rights.

The volume of business in the courts of the States of the Union, civil and criminal, by far exceeds that of the United States courts. To the State tribunals are committed the punishment of the gravest crimes, the Federal courts can cover but a limited field in comparison. Together, the

courts, State and Federal, constitute, under our form of government, the voice of the only true Sovereign in our political system, The Law,—of which the United States Supreme Court has so well said:

“No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

“It is the only supreme power in our system of government, and every man, who by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.”

Not as rivals, but as co-workers under our dual system of government let the courts of the country—State and Federal—work together to maintain that law of which it was long ago eloquently said—

“Of Law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world: all things in Heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power: both angels and men and creatures of what condition soever, yet all with uniform consent admiring her as the mother of their peace and joy.”

## STORIES OF A NORTHEAST GEORGIA LAW PRACTICE,

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ADDRESS BY  
A. L. FRANKLIN,  
OF AUGUSTA.  
(Stenographically Reported)

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*Mr. President, Ladies and Gentlemen:*

The most undesirable feeling I think that a man can possibly have is to be waiting to take a train which is about due and have a lot of other necessary things to precede it.

As Ring Lardner would say, ladies and gentlemen, this audience is divided into two classes—delegates at large and those with their wives. (Laughter.) You who are at large I heartily congratulate, and those with your wives I sympathize with your wives. (Laughter.)

It is very necessary and appropriate, Mr. Chairman, ladies and gentlemen, after we have listened with such interest and pleasure to so many papers and addresses, and to so much weighty matter, to have at some place on this program at least two light talks by "High Jinks" and "Low Jinks." I presume you have read the book. I presume, knowing Judge Luke as I do, that his talk will be light. (Laughter.)

Now, ladies and gentlemen, in order that you may understand and appreciate my speech—and it is a symposium

of stories of a Southeast Georgia Law Practice, court stories—

The President, Interrupting: It is Northeast.

Mr. Franklin, continuing: Is it Northeast? Well, the stories are just the same. In order that you may understand and appreciate it, you should naturally and necessarily know the derivation of the word "symposium." I have heard my good and honored friend, Judge Bell, define it, and also my good and honored friend, Judge Beck, but they have only defined it. They never gave you the derivation of the word. So I looked it up and it comes from two Latin words, "symp" and "ossium" (laughter), and this discussion is by a "simpleton" or a "bonehead," either one or both. (Laughter.) As has already been told you, the most liberal definition is a drinking together. Now, there may be a tendency on the part of some of the members present (you might say a desire) to drink; yet there's nothing to drink, and therefore it is paradoxical, and to be absolutely logical we should either eliminate the subject or pass the wine. (Laughter.)

Now, ladies and gentlemen, we have as the Judge of the Superior Court of the Augusta Circuit, in many respects a very peculiar man, in others a very brilliant one, and in passing I should like to say that by his voluntary retirement from the bench the State and the citizens at large are going to lose one of the most capable and brilliant judges who ever adorned the bench in this State. (Applause.) Not only has he been brilliant, learned and technical in the past, but he will be in the future. He is the most brilliant of any judge who will ever be in the State, with one exception—I thank you, ladies and gentlemen. (Laughter and applause.) That shows you how easy it is, and how comforting, to talk to a bright and intelligent audience. Modesty forbids my calling the gentleman's name. (Laughter.)

Now, of course these speeches are good for what they are good for, and you will have to accept them in the spirit



in which they are made, because these speeches are in obedience to a request made of us, my friend Judge Luke and myself, on this occasion. Necessarily the time would not permit us to tell, and you don't desire to hear, all the stories we know because many of them cannot be told in a mixed audience. Therefore we will have to limit them, in order to be successful, at least to a very few of them, and the one or two that I shall give you are actual stories, actual happenings in our court.

I said in many respects our judge is peculiar. He for a long time has made it a custom when a prisoner has pleaded guilty to a minor offense, if he has the time, to take him into his confidence, and inquire of him what he thinks the judge ought to give him as a sentence. So long has that been the custom and habit of our circuit that the prisoners at large have begun to think that it is their right to help the court to fix the sentence. At our last term of court a darkey pleaded guilty to a charge of burglary, and we didn't have much time to spare. The judge, after inquiring into the facts in the case, said, "Stand up! I will give you three years in the penitentiary." The darkey said, "Well, jedge, I couldn't do that." "Well," said the judge, "What would you be willing to do?" (Laughter.) "Well, jedge," he says, "I think about nine months would be enough for me." The judge said: "I will give you two years of 364 days." "Well," he said, "If you do that, that will be all right." (Laughter.)

At one term of court we had a darkey who was charged with stealing \$120.00 from his father-in-law. It seemed that the old man's son-in-law was a worthless sort of a negro and lived mostly by pilfering around. This old darkey was a hard worker. He had saved up \$120.00 and put it under his trunk, not in it. This old father-in-law, after helping his son-in-law out in various ways from time to time finally moved him into the house with him, and the son-in-law soon found out where the money was and proceeded

to steal it. He was arraigned and pleaded guilty to that. The judge said to the old man: "What do you think ought to be done with your son-in-law?" The old darkey, who was about sixty-five years old and had all the air and dignity of a negro preacher, with long, heavy specs that went to the end of his nose, looked at the judge and said: "I don't really know, jedge, jes' what ought to be done wid him." "Well," said the judge, "what do you think?" "Well, if I was a jedge," responded the old man, "I would know, but of course I wouldn't like to say." "Well," said the judge, "you come up here where I am, and I'll let you sentence him." The old darkey marched up on the rostrum, and looked up in the gallery at the "niggers" looking at him about to pass sentence on his son-in-law. The judge said: "You look at him and ask him any questions you want to before you sentence him." The old darkey pointed his finger at his son-in-law, and said: "Ain't I been good to you?" "Yes, sir." "Didn't I pay your rent out on Gwinnett Street to keep them from moving you out of doors?" "Yes sir." "Ain't I sent something to eat to your house, when you was hongry?" (Looking up at the gallery at those "niggers"). "Yes, sir; you shore have." "Then I took you in my house, you and your wife, and fed you for three months?" "Yes, sir; you treated me all right." "Then you got my \$120.00?" "Yes; I did." "Well then, I'll give you a hundred and twenty years in the penitentiary, and when you gits out, you won't never bother nobody-else's money." (Laughter.) Well, of course the judge was obliged to cut that sentence some.

There was once a young fellow being tried for biting off another's ear, and this story illustrates the fact that a lawyer may at some time ask a witness one question too many. The defense had two or three witnesses, one of whom was a very upstanding old magistrate who lived in a rural dis-

trict and ran a grocery store and so on. The State made out a technical case and after the defense had put up a witness or two, they called the star witness, this old man, and this colloquy ensued:

Q. "Did you see this fight?"

A. "I saw every bit of it."

Q. "Did you see this defendant bite off this person's ear?"

A. "No, sir; he didn't bite it off."

Q. "Did you see the fight from start to finish?"

A. "I saw every bit of it, and he never bit his ear off."

The old witness was allowed to come down from the stand and got as far as the door when the attorney said: "Stop right where you are. I want to ask you one more question. Did you see the prosecutor and the defendant when they fell to the ground?" "I was looking right at them." "Did he bite off his ear then?" "No." "Did you see him when he got up?" "Yes." "Did he bite it off then?" "Well, now," said the witness, "I did see him spitting out a piece of an ear, but just whose ear it was I don't know." (Laughter.)

Now, ladies and gentlemen, since we have a "permanent" organization, I want to tell you a story, which shows you the distinction between a "permanent" and a "temporary" chairman. (Laughter.) I thank you. I will now skip a page. (Laughter.) Judge Hammond and I once had Jenkins County in our circuit. My friend, Mr. Anderson, is a very vigorous lawyer down there. Mr. Anderson was then in the legislature. We tried a case and made out a completely overwhelming case. Mr. Anderson had put in his defense and gone to the jury, and if you gentlemen know how he talks, you know how loud and long he talks and how he gets down and hollers to the jury at the top of his voice and exhausts himself and all that. Well, after he had finished speaking, I didn't make a speech, but I told this story which is a story I read somewhere. The sense of it was this: An old man in North Carolina had one son. He had

got tired of living at home and he said, "Daddy, I am going out to pull for myself." "Well," said the old man, "this world is going to be mighty hard for you." He replied, "I have got to go. I am going out West and build up a name for myself." The old man never had anything to give him but advice, but he gave the boy a lot of that and told him not to do anything which would bring dishonor to his father's name. The boy went and had been gone about two years before the old man ever heard from him. Then a letter came and this was the conversation that took place between the old man and his pastor. The old man had got this letter from his son and went to his pastor, and said: "My son has been gone two years. I had not heard a line from him until I got this letter, and I cannot tell his old mother. I will have to get you to break the news to her." The pastor immediately consented. The old man continued: "I told him before he left here never to do anything that would bring dishonor to his old father's name, and now I get this letter from him out in Denver, and he says he is in the legislature, but he don't say what for." (Laughter.)

My friend, Tom Hardwick, when he first ran for Congress in the Tenth District, looked around for an issue. Instead of getting an issue, he got a plank, and that was to eliminate the darkies from politics. He went over the district, stumped it and played it, and finally won out in the primary, and he and his friends selected Augusta as the place where the formal nominating speech should be made and where he would reluctantly accept the office. (Laughter.) The time was set, the date fixed and they came down. He had chosen a young man from Washington County, whose name I don't recall, to make the nominating speech. This young man came down with long, bobbed hair and a Prince Albert coat. When the time came they ushered him in. On his broad shoulders he seemed to be carrying the troubles of the ages. He stepped forward, buttoned up that coat and then unbuttoned it button by button,—boys this ac-

tually happened—he surveyed his audience and brought forth this: “Oh, my fellow citizens of Richmond County, Washington County, and all these other adjoining counties: the battle has been fought and the victory won, and I want to tell you today that the Fourteenth and Fifteenth Amendments to the Constitution of the United States are locked up in the vaults at Washington, and I know of no man more capable of tearing them therefrom than Thomas W. Hardwick, of Washington County.” They gathered around him and they gave him some ice water, and when he had backed off two or three feet, he ran his hand through that long, bobbed hair, and rolled up his sleeves, and one by one he finished his arguments. (Laughter.)

Do you know, for the past few years that the chief executives of this State have all been very small men? They have averaged in weight, I presume, about as much as an ordinary sack of flour. I have in mind Joe Brown, Hugh Dorsey and Tom Hardwick, all my friends; but, thank God for the enlightenment of progress since the ratification of the Nineteenth Amendment to the Constitution by which women are allowed to participate in governmental affairs, we, the most enlightened and intelligent, have at last come into our own and the time is not far distant when these high offices will be filled by much more weighty men, such as Judge Roscoe Luke and myself. (Laughter.) When you look around you, you see how woefully we are lacking in statesmen and statesmanship. All of our men seem to have developed into politicians. We don't have any more men like Stephens, Toombs, Calhoun, or Grady, but all of them have developed as I said into politicians until frankness compels me to say that I am about the only man left who even approaches them. (Laughter.) I have been coming to this Bar Association for the past few years and I have never yet been asked to be its President, and yet you have selected very mediocre men. I cannot understand it, except on the theory that it is politics. I have never served on any committee, except what is termed the “Tombstone

Committee," and I have done that with all the solemnity that attaches to an appointment of that sort. (Laughter.)

Now, my friends, ladies and gentlemen, since I was notified that I was expected to make a few remarks here to-day, I have not had one moment to prepare anything for you because I have been busily engaged answering letters and telegrams from Washington in reference to the successor to Judge Evans, of the United States Court. Each of those letters has been insisting upon my accepting this position, but for the life of me I do not see how I can sacrifice such a large and lucrative law practice for the acceptance of this very honored and honorable position, though I am thoroughly conscious of the fact that a man's first duty in this life is to his state, his country, and his fellowman, and sacrificial though it may be, if the call for me is loud and clear enough, I may yet be induced to accept this position. (Laughter.)

Now, seriously, ladies and gentlemen, I have enjoyed every minute of my visit to this Association, as I usually do. The many papers read and the addresses made have been interesting. They have been learned. They have been scholarly. And I know they have been enjoyed by every one present. Particularly am I glad to see present with us again so many of the ladies, and, as the years go by, and the time approaches for the meeting of the Georgia Bar Association, I hope each of you ladies will get together your powder and chifon, and come along, and give us the honor of your presence, because on occasions of this kind you add so much of gentleness, of kindness, of charm, and of beauty, that we have long since decided that we never want to be without you. May we, as an organization, or whether as an organization or in the sacred precincts of our homes, ever have with us

"Perfect woman, nobly planned  
To guide, comfort and command.  
Yet gentle and bright,  
With something of an angel's light."

(Applause.)

## STORIES OF A SOUTHEAST GEORGIA LAW PRACTICE

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ADDRESS BY  
JUDGE ROSCOE LUKE  
OF THE COURT OF APPEALS OF GEORGIA  
(Stenographically Reported)

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*Mr. President, Ladies and Gentlemen:*

My treasured friend, Judge Powell, speaks of me with a kindness which I do not merit. Every man, however, appreciates that spirit of friendliness and kindness that prompts his words of commendation, and I thank him, with the assurance that his love for me is reciprocated.

I am invited by our president to relate to you some of the incidents of my practice in southwest Georgia. I have been advised that the incidents which taste of good humor are the ones that will most likely please. I, therefore, find myself occupying a rather awkward place on the program. A man undertakes a serious burden when a part of his service is to be, even though for a few moments, humorous. I am further embarrassed by reason of the fact that the hour of final adjournment is present, and the "dinner horn" is sounding at the Tavern. With this confession, I shall trespass for only a few moments on your time.

As suggested by Mr. Franklin, who has just addressed you, giving to you some of his experiences as a practitioner in the northern part of the state, many things happen that we forget; many things happen that we cannot tell. In

every court room there are at some time ludicrous situations presented by the conduct of the court, the parties, the witnesses, excuses by jurors, officers, etc. I have tried to catch, and have enjoyed every humorous situation presented. I don't want to get on the shady side of the street and live there all the time. I want to be most often on the sunny side. It is that side when we leave the court room, that relieves us of the fatigue of our work. It is those situations that relieve a judge of his tiresome duties. Even my colleagues on the appellate court are refreshed by good humor.

It is hard to begin to note just the first humorous thing that suggests itself to me. There are so many incidents of my quarter of a century practice that are amusing that I hardly know the first to relate. Let's start, however, by relating an occurrence when I was first appointed prosecuting attorney in my county. I felt my importance and appreciated the responsibility. It was a "big" court, and I was present there with all the dignity that a prosecuting officer could possess. We were there for business, and serious business. The first case sounded on the docket was an indictment charging a negro man with the offense of assault and battery. As the trial began, I considered myself fortunate for I was able to present in behalf of the State a white witness who had seen the alleged aggravated battery. We will say that his name is John. He was one of those fellows, who, when you asked him a question, had to yawn. Now, these ladies may have never seen a witness on the stand, who, when you asked him a question, will yawn before he answers, but these lawyers, nearly all of them, have. I put John on the stand, and, to make it brief, I interrogated him as follows:

"Q. John, did you see this little disturbance between these two darkies?

A. (Yawning) I shore did.



Q. Where did it happen?

A. (Yawning) Down yonder back of the jail.

Q. Did you see this negro hit the other one over there?

A. (Yawning) Yes, sir; I was looking right at it.

Q. What did he hit him with?

A. (Yawning) Well, he picked up a half grown hound puppy and hit him the hardest lick I ever saw."

It was the first and last time I have ever heard of a battery being committed with a half-grown hound puppy, but that happened.

At one time, I was prosecuting several persons for gaming. My main witness was a Russian Jew. His name was Isaac Levine. He was questioned about as follows:

"Q. Where were you born?

A. I vos born up stairs in mama's room.

Q. On the 15th day of June, were you on the second story of building No. 246 on Washington Street?

A. Shurely.

Q. Who was there with you?

A. Joseph Einstein, Harry Levy, Abram Blumfeld, Jake Goldstein and all dem fellers what plays poker.

Q. Were they playing poker for money?

A. They vos playing poker for chips vot dey got out of de box.

Q. Did they put any money in the box for the chips?

A. Joost a leetle.

Q. Did you win any money?

A. Not one cent.

Q. Was there a kitty or a take-out for the house when a full house was made or fours were held?

A. Ah-Ha! I sees you played joost a leetle poker yourself."

My witness instinctively turned the card on me.

At one time in the trial of a case in Grady County, when Judge Bell was solicitor of that court, now judge, my opposing counsel put a witness on the stand to impeach

my client. This witness testified that my client's character was so bad that he would not believe him on oath. On cross-examination, I interrogated him as follows:

"Q. Are you a member of Mt. Zion Baptist Church?

A. I shore am.

Q. Is not Mr. Jones, my client, a deacon in that church?

A. He shore is.

Q. Did you vote for him for this important office?

A. Yes, sir.

Q. Do you tell this jury that you voted for him as a deacon of your church when his character is just such that you would not believe him on oath?

A. Well, Colonel, that was the best we could do at that time."

So you see it is possible to hold important office in the church by the vote of those who do not have the highest regard for the integrity of the officers.

A young lawyer was representing a negro charged with crime, and I was prosecuting him. To a question asked by the defendant's counsel, I lodged an objection. The judge turned to the young gentleman and said, "what do you say to that?" "Judge, I have this to say. I know the answer of the witness, and, if you rule that out, I will have nothing on which to base my argument in this case." I withdrew the objection.

While in an adjoining county to my own attending court, I witnessed the trial of a negro charged with hog stealing. We all know that when you associate a negro's name with a hog he is usually a goner. The lawyer representing the negro was quite a character. He had the reputation of having the strongest voice of any lawyer in that whole section, and it was his pride that he could fairly deafen his hearers. A hundred or so yards was close enough to understand his every word. The witness for the state was testifying about where the hogs ranged, and while the witness was undertaking to tell how the defendant got the hog

out of the range over to his place, and was telling about the strewing of corn along for the hog to follow, he stated in referring to the defendant, "He tolled the hog from underneath a chinaberry tree," whereupon the defendant's lawyer jumped to his feet and yelled, "Your Honor, I object!!!" You could have heard him three quarters of a mile. Judge Roberts, who was presiding, asked, "What is it you object to?" "I object to what he told (tolled) the hog; that's hearsay." By the way, I was told afterwards that the ruling of the judge upon the lawyer's objection was made a special ground of motion for new trial, and no doubt the appellate courts subsequently had to pass on the question. You may see from this that all questions raised in the appellate courts are not of sufficient merit to reverse the rulings of the trial courts.

I was employed in the defense of a man—let's call him "Buck," for he is still living—charged with the killing of his mother-in-law. The substantial part of my fee turned out to be the rifle with which he shot, and by the way, I still have this rifle. Our defense was that my client was crazy, no other defense would likely avail a son-in-law in the destruction of a mother-in-law who lives in the same house with her daughter and the son-in-law. After the conclusion of the evidence and the charge of the court, the jury considered the case for two full days, and finally returned a verdict of not guilty. I was interested to know what had kept these good and true men out so long, while my client was anxiously awaiting the results. I inquired of one of the jurors, and he told me that upon the first ballot, the jury stood eleven to one for acquittal. That one fellow sat in the corner and they couldn't get anything out of him. Finally one member of the jury approached him and asked, "what is the matter with you, why can't you get together with the balance of us?" "Well," he replied, "I don't think that the prosecutor in this case, the husband of this dead lady, should lose his wife, lose the case, and at

the same time, have to pay the cost of the case." The question of "cost" kept my client on the anxious bench for forty-eight hours. You may see from this that the cost of litigation must be reckoned with.

I tried a case at one time where a step-mother had the grand jury to indict her step son for using profane language without provocation in her presence. She testified to the language set out in the indictment, and in response to my question, said that it was used in her presence without provocation. The defendant's attorney examined her as follows:

"Q. Aunt Mary, you didn't give John any provocation that would cause him to use all of this vile language in your presence.

A. Not na'ry bit of provokement did I give him.

Q. What did you say to him just before he used this language?

A. I never said anything except that he was a sheep-thieving scoundrel and I can prove it."

Upon the defendant's acquittal, I had to say something to quiet Aunt Mary's temper, for Aunt Mary would have licked me right there if I had told her she had failed to make out her case. After explaining to her that by a peculiar wording of the statute framed by the legislature, we had lost her case, and not by her having failed to swear with sufficient force, she said, "God knows, if ever us good women can have something to do with the making of the laws, we kin git some sort of protection agin this kind of business."

I know that today Aunt Mary is happy in the realization of the right of woman to hold office and frame laws by their votes. We all agree that woman's right of suffrage will promote the best interests of society.

I attended a session of a justice's court presided over by a justice of the peace who had held the office for approximately forty years. There was a case pending in which

both the plaintiff and the defendant were men of the highest character and whose word would be believed anywhere. Neither had a witness. The plaintiff testified to a state of facts which made a case demanding a judgment in his favor. The defendant testified directly opposite and to a state of facts which disputed entirely the testimony of the plaintiff. The justice of the peace knew that neither of these men would testify falsely, and that neither would be swayed in the least by interest. At the conclusion of the evidence, the justice, who was presiding without the aid of a jury, asked if there was anything further from either side before he should render his judgment. Counsel for both parties stated there was nothing further. The judge shouldered the responsibility and announced as follows: "Gentlemen, I set here in a two-fold capacity, as judge and as a jury. As a jury, I declare a mistrial, and as a judge, I continue this case until the next term of court at which time there must be some more evidence." What better judgment could the justice have rendered? What other conclusion could he have reached? When the testimony of the respective parties was placed in the scales, didn't they evenly balance? What conclusion would you have reached?

While representing a railroad company, I seldom litigated cow claim cases, but there was one particular plaintiff that had so many cows killed that we determined it was best to litigate about every other month with him, the question of our liability. I had talked with the negro fireman on the train that killed the cow in question at this particular time. He told me when the engineer observed the cows feeding near the track, he began blowing the whistle, and he, the fireman, began ringing the bell. He said the distance was three hundred yards away. I went over it with him several times and each time the cows were three hundred yards away. When I put him on the stand, I questioned him as follows:

"Q. What is your name?

A. Three hundred yards away, sir, de engineer blowed de whistle and I begun to ring de bell."

The plaintiff got a verdict for the violent and sudden death of his Jersey cow. This convinced me that it is not always safe to go over your case too often with your witnesses.

A negro defendant charged with bigamy was discussing his case with one of our negro lawyers. The defendant discovered for his counsel that instead of only having two wives in violation of law, he had three. His attorney moved the acquittal of his client for the reason that "Your Honor, this nigger ain't guilty of bigamy, he is guilty of trigonometry."

A most accommodating sheriff of my county was asked by me, during the progress of a trial, to please bring me the 104 Ga. Report. With the assurance that he would soon return with it, the sheriff left in search of it. Some little time afterwards, he returned and proffered me a book, saying, "Judge, I couldn't find the 104 Ga., but here is the 105 Ga., and as it is the nearest to the number you wanted, I hope it will do just as well." The adverse judgment pronounced against my client's interest convinced me that the 105 Ga. was as of much service as the 104 Ga. would have been.

Judge Sibley's statement this morning to the effect that no one commended a spy or stool-pigeon, but had to endure them, reminds me of an incident in the trial of a negro charged with disturbing religious worship. The negro preacher, in giving details of the disturbance during his service, related the conduct of the defendant as follows: "Gentlemen, dis here nigger come into my church while I was preaching a lucidating sermon to a great congregation, drunk and staggering from one side of de isle to de other, and I stopped and looked straight at him, and with all the

strength of my voice, I said to him, 'nigger, I's gwine to appear before de bar of judgment and swear agin you for your conduct on dis Sabbath morning.' He says to me like dis, 'Gawd knows you will do it, it's de damdest rascal what turns states' evidence first.'

Several years ago, one of the officers in my county was questioning a vagrancy suspect. He ventured to ask the gentleman what he did for a living. His answer was, "My wife makes coats for Mr. John Andrishok, the tailor, on Broad street. That is what I do for a living." Suffice it to say that on the next day, this hard-working man was seeking other ways of making a living. The same statutes which denounced vagrancy, murder, arson, burglary and so forth before the passage of the Volstead Act, are still a part of the criminal law. There should be just as vigorous enforcement of one law as of the other.

All laws upon the statute books should be enforced. It doesn't make any difference whether we agreed to the wisdom of the law before its enactment or not. When it comes to be the law, it is the law, affecting all alike. It is not, and it should not be necessary that one law be violated in order to enforce another. Orderly legal procedure is the safeguard of the courts. Play no favorites in the enforcement of your criminal law. Restrict no man's legal rights. Adjudge him guilty only by the law. Give to him literally every benefit accorded him. The law which guarantees a defendant an impartial trial is no less a law than the law which denounces the crime with which he is charged.

In the court house and in the trial of cases, we necessarily must have disagreements incident to the disposition of so many cases upon which depends the preservation of society and our court. Take this very meeting of the association, there has been a little friction here and a little disturbance there, but with it all, I have been impressed with the good nature with which all the members take these

differences. Just these little incidents bring out the best there is in us. Sometimes purposely, there is a suggestion made to bring about argument and criticism for the purpose of moulding correct sentiment. Just here I have in mind an address delivered a few years ago by Judge Maynard before the Michigan Bar Association. He was discussing the 5 to 4 decisions of the Supreme Court of the United States. As a preface to that discussion, he recited many instances where upon one vote the whole current of affairs was changed, or by one incident history was made. I remember he told the story of how a pig caused the war of 1812. "An election was being held for members of the legislature in Rhode Island. One thrifty federalist farmer put off going to the polls until late in the afternoon, leaving himself just time to get there before they were closed. Just as he started, he heard a pig squeal. He looked around and saw that the pig had its head caught in an old worm fence. The farmer stopped to get the pig out and as a result when he did get to the polls, they were closed and he lost his vote. A man running on the democratic ticket was elected by one majority. At the following session of the legislature, a democrat was elected to the United States Senate by one vote. In the United States Senate the vote deciding that we should go to war with England was carried by one vote. The Rhode Island Senator so elected voted yes. It follows that the pig caught in the fence caused it all." He further tells of the election of General Andrew Jackson over General John Serview for the Major Generalship of the Tennessee Militia by one vote. Under Jackson's leadership, we won at Horseshoe Bend and New Orleans. He gives the further example of where one vote gave to the United States Senate the great Thomas H. Benton, who for so many years was a commanding figure in the United States. He relates this incident as follows: "On the convening of the first Missouri legislature, Mr. Barton was unanimously elected one of the



new State's senators. Then followed a deadlock for three weeks on the other senator. To break it, the legislature allowed Barton to select his senatorial partner. He selected Benton, but he was so unpopular that it took three weeks to elect him, and then by just one majority. That one vote was cast by a sick member who was carried in on a stretcher and who died half an hour later. That one vote launched Mr. Benton on his great career." Judge Maynard directs our attention to the fact that perhaps, "the Protestant Reformation really began at Erfurt when Luther rummaging through the library there ran across a dusty copy of the scripture, opened it and read—"The just shall live by faith."

It is not seldom that just one little incident influences the finding of a jury and sometimes influences sentiment everywhere. The little incidents and the little friction that take place in this Bar Association, promote the best that there is in us, and this is true of the humorous as well as the serious incidents. Because of the seeming friction at this meeting, let not some of the people of the State gain the notion that the lawyers of this State, that the judiciary of this State are not all right, for when it comes to the enforcement of the law, the preservation of society, the guaranty of the right to enjoy life, liberty and property, the worship of God according to the dictates of one's own conscience, the best on God's earth lives with us. My friends, I am not a pessimist, I am a natural born optimist. I am almost like the fellow that fell out of the eighteen story building—when he passed the tenth floor in his descent, he said, "Thank God, I am all right up to now." Let not unjust criticism disturb you, keep your faces eastward towards the rising sun

## REPORT OF COMMITTEE ON MEMORIALS.

*To the President of the Georgia Bar Association:*

In response to your appointment of the undersigned as the Committee on Memorials, we beg to report that almost a year elapsed from the last meeting of the State Bar Association, before any deaths among our members, so far as your Committee can ascertain, took place; and it remained until a few short days prior to the Convention for the melancholy occurrences to eventuate, removing from among our number three\* of the most distinguished representatives of the Georgia bar—referring, of course, to the lamented Judge Beverly D. Evans, the lamented Major Joseph B. Cumming, and the lamented Robert L. Berner.

In view of the attainments of these departed brethren, your Committee has regarded it as somewhat proper for the memorials of the distinguished dead to be prepared by one of their intimately related contemporaries; and we have therefore requested Judge Andrew J. Cobb to prepare the memorial of Judge Evans; Honorable William H. Fleming to prepare the memorial of Major Cumming; and Honorable Roland Ellis to prepare the memorial of Mr. Berner. The willingness on the part of these gentlemen to prepare these reports is sufficient guaranty of their fitness and value.

Respectfully submitted:

WRIGHT WILLINGHAM, Chairman;  
WARREN B. PARKS,  
A. J. PERRYMAN, JR.  
H. A. PEACOCK,  
C. C. BUNN.

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\*James LeConte Anderson died after this report was written. His memorial is also included.

## MEMORIAL OF JOSEPH B. CUMMING.

BY WM. H. FLEMING, OF AUGUSTA.

When the Georgia Bar Association was organized in 1883, largely through the efforts of Mr. Walter B. Hill, afterward chancellor of the State University, the honor of being the first president was bestowed on Mr. L. N. Whittle, a distinguished member of the Macon bar, who was at that time vice-president for Georgia of the American Bar Association.

At the first regular meeting in 1884, Judge W. M. Reese, was chosen president for the ensuing term, and at the next meeting, in 1885, that distinction fell to Maj. Joseph B. Cumming.

A more fitting selection could not have been made; and now that he has passed away, at the ripe age of more than eighty-six years, it will be highly profitable to us, and to others, to review, even though briefly, his life career, and consider what kind of a man he was.

His grandfather, Thomas Cumming, was the first intendant of the city of Augusta, chartered as a municipality in 1798. He was also President of the "Bank of Augusta," established in 1810, the first bank ever chartered in Georgia.

One of the sons of Thomas Cumming was Henry H. Cumming, a distinguished lawyer and public spirited citizen, specially known and honored as the far-sighted originator of the plan for better securing an abundant supply of water for municipal purposes, and for establishing a manufacturing center at Augusta, by building a canal seven miles in length, to utilize the water power of the Savannah River. Such a vision was difficult of realization in that day, but Mr. Cumming's faith and perseverance never flagged. He and Mr. John P. King, advanced, out of their own pockets, the

money for the preliminary survey, and with the assistance of other prominent citizens, triumphed over all obstacles and opposition, financial, engineering and legal, and had the satisfaction of seeing the water turned into the canal on November 23, 1846.

Mr. Henry H. Cumming married Miss Julia Ann Bryan, and in that marriage, two distinct racial types were united. The husband was of Scotch-English extraction with light hair and eyes and fair complexion; the wife was decidedly French, with black hair and eyes, and dark complexion. From this union sprang a remarkably gifted group of children, all bearing the physical characteristics of the mother, with the finest mental qualities of both parents—a combination of English strength and French polish.

Joseph Bryan Cumming was born February 2, 1836; received his early education in local schools, graduated from the State University (then Franklin College) at eighteen, sharing the first honor with Gustavus A. Bull and John H. Hull. He then spent several years in European travel, most of his time being devoted to Paris. Upon his return to America, he took a year's course at the Harvard Law School.

At the session of the Superior Court of Columbia County in 1859, he was admitted to the bar, and gained his first legal victory in what appeared to be an almost hopeless case.

While on his European tour, he met Miss Katharine Hubbell, a beautiful American girl, native of Bridgeport, Conn., and a romantic attachment was the natural result. Sectional differences might count with politicians, but not with lovers. They were married in October 1860, and were blessed with three children, one of whom died in girlhood, and two have survived him, Hon. Bryan Cumming and Mrs. James Paul Verdery.

But even then, when the sound of the marriage bells had scarcely died away, the war clouds were gathering, and for a young man of his mettle there was but one thing to do.

Early in 1861, he joined as a private, the Clinch Rifles, Company A, Fifth Georgia Regiment; in September, 1861, was made lieutenant in Company I; in January, 1862, was promoted to captain, and served as assistant adjutant general at Shiloh, where he was slightly wounded; served also in the Kentucky campaign, and at Murfreesboro, where his horse was shot under him. He was then promoted to major, and served in the adjutant general's department of Walker's command. After General Walker was killed in the Battle of Atlanta, 1864, Major Cumming was transferred to General Hardee's staff, and subsequently to that of General Hood, and finally to General Johnston's staff, in which position he remained until the army was disbanded, which fact alone prevented him from taking active command of a regiment of which he had been appointed colonel.

With two minor exceptions, he took part in every battle of the Western Army, from Shiloh to Greensboro. Throughout the war, he was a soldier without fear, and without reproach. He fought not for pay, but for principle, and in the true spirit of that maxim which through centuries has been the inspiration of noble minds: "*Dulce et decorum est pro patria mori.*"

After the war he returned to the active practice of his profession at Augusta. But in those days of doubt and distress, men of his moral and mental calibre, were not permitted to devote themselves entirely to private affairs. The public needed them, and Maj. Cumming never shirked his duty, nor declined an opportunity for service.

The student of history, seeking to judge correctly the movements of the masses of the people, finds no sounder basis on which to rely than the facts gleaned from the truthful biography of individuals. In the hope of thus aiding the future student of the history of the Ku Klux Klan, let it be said here that Major Cumming was reputed to be one of the local officers at Augusta, when that organization was formed under the leadership of General Forrest and other patriotic Southerners to meet the desperate conditions of

"reconstruction" in the direst necessity for self-preservation. None but the bravest and truest could be admitted to the Klan of that day. Its members were composed almost exclusively of former soldiers. They were accustomed to danger on the battlefield. They were now called on to face danger in a more objectionable form, the jail, and perhaps, the gallows. Their courage and self-sacrifice were equal to the emergency.

But Major Cumming was always the outspoken advocate of law and order, and when the immediate necessity was passed, that secret organization, voluntarily disbanded; though not before some wrongs had been perpetrated in its name by lawless outsiders. If that order had not been originally justified by then existing conditions, it could never have enlisted the aid of as honorable a man as Major Cumming. When its purposes were perverted, it could no longer receive his sanction. The founders of the original Ku Klux Klan would never have arrogated to themselves, in these times of peace, the right to administer justice outside the courts, and according to conclusions reached in secret conclave, to be executed under cover of masks. Publicity, not secrecy, is the demand of advancing civilization. "When was truth ever put to the worse, in free and open encounter?" was the bold challenge of John Milton, statesman, as well as poet, in times more perilous than ours. All secret, oath bound orders that engage in politics, under whatever name they operate, are dangerous to a free democratic government.

In other ways also, Major Cumming served his people. In 1868 he was presidential elector on the Seymour and Blair ticket. In 1871 he was elected a representative in the State Legislature from Richmond County; and in 1872 was made Speaker of the House. In 1877 he was chosen State Senator. In 1872 his admirers were eager to send him to congress, and nothing but the unexpected presentation of the name of Alexander Stephens with his prestige of political influence and wisdom, thwarted that purpose.

What politics lost, the legal profession gained. In 1877, he was made general counsel for the Georgia Railroad & Banking Company, and safely guided its legal affairs for more than fifty years.

As a lawyer, he was never at a disadvantage in a contest of the court room, or at a loss in the consultations of the office, because he had mastered the fundamental principles of the law, and his keen analytical mind assured almost unerring certainty in applying those principles.

His respectful demeanor to the court and his unfailing courtesy to opposing lawyers, relieved forensic contentions of many of their exasperating features.

In matters of honor and principle, he was a foe to compromise. When duty called there was nothing timid about him. His moral courage in peace was equal to his physical courage in war. Nothing could illustrate this quality better than the address he delivered as president of this Association in 1886. His subject was: "Lawyers the Trustees of Public Opinion."

He asked the question: "Is the Bar of Georgia altogether worthy to be the trustee of the people of Georgia for so high a trust as public opinion, and with such large powers as the trustee possesses?" He answered his own question in these plain words: "The Bar of Georgia as it now is, is not altogether worthy of this important trusteeship." With incisive analysis he laid bare the distinction between the law as a trade, and the law as a profession.

In politely seeking to soften the harsh truths he had spoken, he said:

"On the one hand, I abhor flattery, and despise flatterers; and on the other, I reverence the high and sacred profession of the law. \* \* \* The perfection of Christian character is not compassed in this mortal life, but no faithful preacher will fail for that reason to hold it up as an end and an inspiration. \* \* \* Let us then, at least once a year, in the meetings of this association, raise high our standard, and rally around it. If we thus periodically return to true

principles, we shall not in the interims wander hopelessly far away from them. It is with some such idea that I have ventured to make before you, a short address of the character of this one, which I am painfully aware is unworthy of the occasion in every respect except in its honesty of purpose."

Who will deny that in the past 37 years our Association has done much to uphold the ethical standard of our profession? And who will venture to doubt that much of the credit is due to the author of that address?

Courts are established to administer justice. Lawyers are licensed by the state as officers of court, and ministers of justice. Whenever a lawyer is responsible for acquitting a guilty man, or for obtaining any other unjust decision in the court house, he is, to that extent an enemy of the state.

As a speaker and writer, Major Cumming was a master of pure English; and his style was strong and polished. And, after all, "style" is but the expression of the manner in which the mind thinks. He received his education under the old classical regime, and there were few better Latin scholars than he.

At a banquet in Augusta in 1921, given by the Alumni of the State University, with a view of organizing a movement to aid in raising an endowment fund, he, though eighty-five years old, quoted verbatim about half a page from one of Cicero's orations—and then playfully, and with a slight touch of irony, he flattered his audience with the remark, that of course before such a body of college men, there was no need to translate the Roman orator's Latin into English.

But he was particularly fond of Virgil, and his familiarity with that poet was, no doubt, one secret of his graceful, flowing style. For did not Dante before entering upon that horrifying journey through hell, after wandering over-night in that "gloomy wood astray," and "in bitterness not far from death," meet Virgil, the,



"Glory and Light of all the tuneful train"?  
And did not Dante himself then exclaim:  
"My Master thou and Guide.  
Thou he from whom alone, I have derived,  
That style, which for its beauty into fame  
Exalts me"?

In delivering an address at Emory College in 1880, he rather startled his audience by announcing that his subject was "Murder," but soon quieted their fears by saying that he would speak, not of the murder of human beings, but of the murder of the King's English.

No apology is needed for quoting here this fine paragraph of that address:

"The true mission of the champion of the English language, is not reform, but defense. The true legend to be emblazoned on his shield is not 'Reformer,' but 'Defender.' His true policy is not the conquest of new realms, but the integrity of the old. Take the dear mother tongue as it exists under your watchful protection and guard it sacredly; and that you may appreciate the sacredness of the duty, think what is that mother tongue in its purity, undisfigured, undeformed, unpoisoned by the murderous practices I have spoken of. It is all sufficient for the wants of domestic and friendly intercourse. It is the language in which humor and pathos have formed the closest alliance. It is the language, in which the orator, secular or sacred finds scope, boundless as the air, free as the ocean. On the wings of this English language, epic poetry has made its sublimest flights; and in its accents, the lyric poets have sung their sweetest strains. In its terms have the truest principles of civil liberty been formulated. It is Freedom's true mother tongue. Clear enough for the philosopher, sublime enough for the poet, robust enough for the orator, airy enough for the wit, tender enough for the lover—in a word, possessed in its purity of all linguistic excellences. Keep watch and ward over this great treasure and repel all who would approach it with unhallowed hands."

That was indeed a remarkable exhibition of physical and mental strength, when Major Cumming, then nearing his

eighty-sixth birthday, stood before an immense audience at Augusta on Armistice Day, 1921, and without manuscript or notes, and without hesitating for a word, and in a voice that reached every part of the hall, delivered an exquisitely beautiful eulogy on the "Unnamed," not the "Unknown" Soldier of the World War.

There are in the possession of friends a few bound volumes containing a number of Major Cumming's most notable patriotic and literary addresses. Nothing is more characteristic of the man, than the following modest dedication of that volume:

*"To My Friend,  
James C. C. Black  
An Excellent Lawyer  
A Brilliant Orator  
A Good Man  
And—to Complete the Climax—  
A Brave Confederate Soldier*

Also a wise and safe counselor, with one exception; he it was who instigated me to do the foolish thing of putting into comparatively permanent form these "Addresses", worthy at best to survive only such brief periods as they might live in the memory of friendly audiences."

One of the cleverest productions of his pen, was a humorous satire on the "Georgia Colonel"—a character quite well known to us all. That production drew from Chief Justice Bleckley this well deserved compliment: The mixture of levity and gravity in your treatment of the subject is admirable. I marvel at your skill in making Literature out of any topic you touch. If you had devoted yourself to letters, you would have had a shining success but then the law would have lost too much. Though I am writing to you, I can not forbear to write of you just as I think."

The Battle of Chickamauga was one of the bloodiest in history. Out of 130,000 troops engaged, the official reports show 37,000 were "killed, wounded or missing." When

the state of Georgia prepared to erect her monument in the National Park embracing that battle field, it was most appropriate that Major Cumming should be named as one of the state commissioners, and that he should prepare the inscription; for he had been through the terrible ordeal of that two-day carnage, and in the stillness of the night after the battle, had poured out his thoughts and emotions in a noble poem, entitled, "Chickamauga, River of Death."

There was carved on the face of the monument, only the first paragraph of the manuscript as prepared, but the entire text is worthy of preservation in our records, as well as elsewhere. It reads as follows:

"To the lasting memory and perpetual Glory  
Of all her Sons, who fought on this Field,  
Those who fought and lived and those who fought and died  
Those who gave Much and those who gave All,

GEORGIA

Erects this Monument.  
Around it sleep Slayer and Slain  
All brave, all sinking to rest  
Convinced of duty done.  
Glorious Battle! Blessed Peace!  
This Monument stands for both of these—Glory and Peace  
For this Memorial of her soldiers' valor  
Georgia places on a foundation laid for it,  
In this day of Reconciliation,  
By those 'gainst whom they fought.  
Glory and Peace encamp about this stately Shaft!  
Glory perennial as Chickamauga's flow,  
Peace everlasting as yon Lookout Mountain."

When President Roosevelt in 1908 appointed Major Cumming a member of the Chickamauga Park Commission, the selection was universally approved. He held that position until the date of his death, April 15, 1922.

There was another inscription for a different kind of monument and for a different kind of hero, written by Major Cumming, that was equally worthy of his head and heart. An humble mechanic was repairing a bridge over a water-way at Augusta. A child playing underneath lost its foothold, and fell into the stream. The workman leaped down into the water to the rescue. Both perished. Some appreciative citizens erected a rugged monument of unhewn

stones, and placed on it a bronze tablet. Let us as Georgians reproduce the record here, in honor of the man who did the deed, as well as of him, who wrote the epitaph:

DENNIS CAHILL

By a deed of self-sacrifice,  
Such as all humanity claims  
and counts among its jewels,  
hallowed this spot and rendered  
his name worthy of such

LASTING MEMORY

as these rugged stones and  
this simple tablet can secure.  
For here he gave his life  
in a vain attempt to save  
from drowning a child having  
no claim for his sacrifice save  
Humanity and Helplessness.

Major Cumming was a strikingly handsome man, always dressed in perfect taste, slightly under average height, but finely proportioned, and with muscles fully developed. He was an expert horseman, and retained his fondness for riding, far beyond the "mid-way of this mortal life."

The writer of this sketch well remembers that when he was a boy of about ten years (it must have been about 1866) he was permitted to go with his older brothers to a tournament—one of those exhibitions of prowess and horsemanship so popular in the Old South.

The scene of the contest was the Augusta Race Course. Many of the old soldiers (then young), entered the lists as knights, and it goes without saying, there was no dearth of lovely ladies in attendance. Major Cumming was officer of the day. He rode a very tall, spirited steed. Coming down from the judges' stand where he had been to make report, or receive instructions, he took the bridle reins in his left hand, grasped his horse's mane, and leaped from the ground, clear into the saddle, scorning the use of the stirrup.

For purposes of physical development, modern gymnastics have not improved much on the horseback riding of antebellum days. Relying no doubt on this same vigor of body, Major Cumming at eighty-five years of age, modestly

volunteered his services to the sheriff to aid in resisting an expected attack on the jail by a mob. Fortunately the attack did not materialize. A friend overheard him remark: "I stopped a mob once. Perhaps I can do it again."

Major Cumming was one of nature's noblemen, a born aristocrat, with the broad sympathies of a genuine democrat, and man of the people. The consciousness of his own worth gave him dignity, and his kindly consideration for others, gave him that indefinable quality we call courtesy and suavity of manner, something nurtured in the heart, not learned by rote. Toward those less elevated in rank and fortune, he bore himself as one fully appreciating the delicate sentiment of "Noblesse oblige."

Many were the times, when by word and deed, he showed his sympathetic interest in the colored people, and true to a race instinct, they never failed in grateful appreciation.

An old blind negro beggar requested the editor of an Augusta paper to publish the following tribute from him:

"Please say how bad I feel that Major Cumming, my best friend, is gone. Seven years ago he interceded for me and got the right for me to sit on this corner, and during these seven years he has never let me or my children suffer for anything. He always told me to come to him when we needed shoes or clothes, or food or anything, and never one time in all these seven years did he ever turn me down when I went to him."

The choir of the Cumming Grove Negro Church, established in Slavery time by his father, asked permission to take part in the funeral ceremonies; and all those who were present, will long carry in their memories the rich melody of those voices as they sang that old familiar hymn, "When Shall We Gather at the River."

In viewing together as one harmonious whole, these qualities we have named of person, of mind, and of heart, do we not all recognize the highest type of the Southern Gentleman?—not the caricature we sometimes meet in life, and more often, perhaps, in light literature, but the real

genuine man. No claim to perfection is made here. That typical personality of our highest culture may have had his faults and weaknesses. If so, we may without hurt or harm, concede that the subject of this memorial shared those faults and weaknesses in some slight degree.

But if at any time in the future an artist should desire to portray with brush, or with chisel, or with pen, the true Southern Gentleman, we can present him with his model in the person of Major Joseph B. Cumming.

Let that statement stand as the climax of our tribute.

Having described Major Cumming's relations to his fellow men, and to this life, we may not consistently omit to consider, to some extent, his relation to his Maker and the next life—though disclaiming any purpose to intrude rudely into that inner sanctuary of the soul.

In the period of his youth and early manhood, there was much controversial discussion going on in the world about the conflict between religion and science, and there were few inquiring minds that were not interested in some of its phases, and affected more or less by the various arguments adduced. Of course there can be no real conflict between science and religion, if each be confined within its proper sphere of action; science with things material, religion with things spiritual; because all truths run parallel—never at cross purposes.

It may be a fact, as report has it, that Major Cumming's mind, alert, analytical and above all obedient to its own divinely-imposed laws of action, could not assent to some of the generally accepted conclusions of the dogmatic theology of that day. But he was by nature essentially religious. He had no kinship with the cynic and the scoffer. He revered God, who in his own words, is the "Loving Father of us all."

If doubts intruded, they were the same doubts of that honest minded man, who, when told by the Master that the cure of his afflicted son depended on his faith, exclaimed: "Lord I believe; help thou mine unbelief;"—the trusting

heart standing ready to chide the doubting mind. The resulting cure of the child, affords conclusive proof that the Master Himself, accepted that measure of faith.

Such types of men and women, get comfort and courage from the simple creed:

*I know but little; I believe much; I hope everything.*

On that ladder they climb from earth to Heaven.

Major Cumming was confirmed at St. Paul's Episcopal church in 1863, and later in life, transferred his membership to the Church of the Good Shepherd, nearer his home on the Sand Hills.

Advancing years brought their inevitable infirmities and anxieties, but he suffered from no craven fear of the approaching hour when "heartstrings break in death."

In his address on Armistice Day, 1921, to which allusion has already been made, we find him saying:

"Alas! How ignorant we are, how little we know! After thousands of years of endeavor, we are still unable to penetrate the veil, depending between this world and the other, in which all of us, in some degree, believe. How thick is that veil? How thin? Is it penetrable from either side? We know that our vision can not pierce it. We would gladly believe that those on the other side are better endowed."

Many hundred years before the tragedy of Calvary, and the glory of Resurrection Morn, a seer of the olden times had affirmed; "I know that my Redeemer liveth." The golden-hearted gentleman whose memory we honor today may not have attained to that triumphant confidence of Job; but we may rest assured that in a calmer, serener mood, he could freely join with Tennyson, in that noblest death song ever written :

#### CROSSING THE BAR:

"Sunset and evening star,  
And one clear call for me!  
And may there be no moaning of the bar,  
When I put out to sea.

But such a tide as moving seems asleep,  
Too full for sound and foam,  
When that which drew from out the boundless deep,  
Turns again home.

Twilight and evening bell,  
And after that the dark,  
And may there be no sadness of farewell,  
When I embark;

For tho' from out our bourne of Time and Place  
The flood may bear me far,  
I hope to see my Pilot face to face  
When I have crossed the bar."



## MEMORIAL OF BEVERLY D. EVANS.

BY ANDREW J. COBB, OF ATHENS.

In the days preceding the war of the Revolution a number of Baptists migrated from Wales seeking a place of religious freedom and settled in Pennsylvania. Among them was Rev. Thomas Evans. The Colony of South Carolina invited these Welshmen to make their home in that colony and made them grants of land in that portion of the State now known as the County of Marion.

The Evans Family thus became identified with South Carolina and the name became a synonym of good citizenship and faithfulness in duty in private life and public station.

A prominent member of the family was Beverly D. Evans. He was born in Marion, S. C., but moved to Georgia and was admitted to the bar at Dublin, Ga., in 1854. He served four years in the Confederate Army and was Lieutenant-Colonel of the Second Georgia Regiment. His military career was one of courage and valor. During the war he was married to Miss Sarah Smith, of Sandersville, Ga.

In Sandersville he lived and followed his chosen profession until his death, leaving behind him a reputation of devotion to the highest principles of life. Beverly Daniel Evans, the subject of this sketch was the son of Beverly Daniel Evans the elder and Sarah Smith. He was born at Sandersville, Ga., on May 21, 1865. He received his early education in the schools of his native county and then entered Mercer University at Macon, Ga., graduating with the degree of A.B., in 1881 at the age of sixteen. In 1882 he received from Mercer University the degree of Master of Arts. He pursued his law studies at Yale University and

returning home was in 1884 admitted to the bar before Judge Thomas J. Simmons of the Macon Circuit who was presiding at Sandersville. A mere youth of nineteen he now faced the future in a profession in which to be thoroughly successful there must be a devotion to high ideals, a power of discerning discrimination and the possession of a great soul.

How thoroughly he measured up to what was expected will be manifest as his career is traced step by step. When barely eligible, only twenty-one years of age he was elected a member of the General Assembly, serving one term making a remarkable impression for one so young.

Again when barely eligible he was elected solicitor general of the Middle Circuit. During two terms he filled this responsible office with signal ability. A touching incident occurring during this time, exhibitiv of his great soul is recorded. He had prosecuted to conviction a man upon whom the judge had imposed a heavy fine. The wife of the condemned man came to him with the story that is so familiar to those who have been connected with the administration of the criminal law. The worthless husband, the devoted wife, the suffering children. The innocent to be greater sufferers than the guilty. She laid upon his desk a few small bills and smaller coin, far less than the amount of the fine. She pleaded for time to work to pay the balance. He handed back her hard earned money, paid the fine from his own resources, and released the criminal into the custody of his faithful wife.

In 1899 at the age of thirty-four, he was elected Judge of the Superior Courts of the Middle Circuit and occupied this position with credit to himself and fearless service to the public.

In 1904 at the age of thirty-eight he was called from the Circuit Bench to the Bench of the Supreme Court, being appointed by Gov. Joseph M. Terrell to fill the vacancy caused by the resignation of Associate Justice Henry G. Turner. It is interesting to note that he thus became the

junior member of the Court over which presided as Chief Justice the man who as Judge of the Superior Court had admitted him to the bar twenty-five years before. He was the youngest man ever appointed to a position on the Supreme Bench, with the single exception of Judge Linton Stephens who was appointed at the age of thirty-six.

His executive appointment was confirmed by the people at the ensuing election, and he remained a member of the Court without a hint of opposition until his voluntary retirement to accept another call to public service.

From 1907 to 1917 he was presiding justice of the Second Division of the Supreme Court, the second highest position in the judicial system of the State. The Chief Justice only outranks.

While a member of the Supreme Court he wrote more than a thousand opinions and participated in the decision of many thousand more. His opinions are contained in twenty-eight volumes of the Supreme Court Reports, 119 to 147 inclusive. His first opinion was in the case of *Hathcock v. McGouirk*, 119 Ga. 973. The controlling question there raised was whether in a quo warranto case, a commission issued by the Governor was conclusive upon the courts since the passage of the act providing a method of contests in elections of the character in question. A truly puzzling question to be dealt with by a young appellate judge in his first deliverance. The reading of his opinion demonstrates his judicial acumen and portends the reputation that was afterwards made.

His last opinion as Presiding Justice was in the case of *Harden v. Atlanta*, 147 Ga. 248. The validity of a city ordinance providing for race segregation in residence sections was involved. The Court in a former case had ruled that another ordinance on the same subject was invalid for the reason that preexisting property rights were violated. The ordinance then under review carefully guarded all rights vested at the date of its passage. The Court, speaking through Presiding Justice Evans, held with one justice dis-

senting that the ordinance was valid. While the Supreme Court of the United States in later years expressed views that seemed to conflict with the ruling in the Georgia case, a close reader of judicial opinions cannot but feel that the reasoning of the Georgia judge demonstrated that he had a clear vision of the indefinable police power and gave to local conditions the true respect that all courts should recognize in dealing with the delicate question of delimiting the bounds of this power.

The writer regrets that the limited time between the preparation and presentation of this memorial precludes the examination and analysis of other opinions of the learned justice intervening between the first and last. One reads after him with profit and is impressed with the accuracy of his legal instinct, the honesty of his mind and the lucid expression of his thought.

On September 1, 1917, having on the previous day resigned as Justice of the Supreme Court he took his seat upon the Federal Bench as District Judge for the Southern District of Georgia. A regret is again expressed that the opportunity is not afforded to call special attention to some of the opinions filed as District Judge and as a member of the Circuit Court of Appeals in which he presided from time to time. An examination of these opinions shows his increasing reputation as a jurist in his new field of work where many perplexing questions were confronted which are peculiar to the new jurisdiction he had entered.

On May 1, 1922, Judge Evans in the prime of life, in the active discharge of duty was suddenly stricken and at the comparatively early age of fifty-seven his early career was closed.

His official career excites our attention and challenges our admiration but his life in office was not by any means his whole life. As a citizen he measured up to the full requirements. His interest in public affairs was not for selfish ends but for service to his day and generation.

He was as a young man of thirty-three a delegate to the National Democratic Convention of 1888 which nominated Grover Cleveland for the Presidency the second time. He was a curator of the Georgia Historical Society and only a few days before his death had been elected to the Presidency of the Society, a position that had been occupied with pride by many eminent Georgians among them Judge John Macpherson Berrien, the first president, Justice Wayne of the Supreme Court of the United States, General Henry R. Jackson, General A. R. Lawton. He ever took an active interest in the affairs of the Georgia Bar Association, responding to call for service in that behalf whenever made. While immersed in official duty and interested in all matters of public concern, he was not unmindful of the more serious and important part of life, the due recognition and cultivation of the spiritual nature. When we look to his ancestry and his environment we are not surprised to find him in his early years a member of the Church and a Church that was the exponent of the Baptist faith and order. His occupation called for changes of residence at times, but no matter where his residence was we find him a conspicuous member and active worker in the local church of his faith. In 1900 he was one of the vice-presidents of the Georgia Baptist Convention, and presided over one session of that body in such manner that it was apparent that he was as conversant with principles of parliamentary law as he was with other branches.

During his residence in Savannah he was the regular teacher of a Baraca Class in the Sunday School of his church, a department of work for the young men and especially those engaged in business or pursuing an education.

Judge Evans was never opposed for any elective office to which he aspired. He was the first person born after the War between the States to be elected to the General Assembly. He enjoyed the same distinction as Solicitor General, Judge of the Superior Court, Justice of the Supreme Court and Federal Judge of Georgia.

It has been well said of him that his "early and continued success in life has been in no small degree due to his unfailing courtesy and charm of manner, not only to members of the bar and litigants but to every one from the humblest to the highest with whom he had personal relation."

Judge Evans was twice married. His first wife was Miss Bessie Warthen, of Warthen, Ga., who died in 1892. In 1894 he married Miss Jennie Irwin, of Shorterville, Ala., a grand niece of Gov. Jared Irwin. He is survived by his widow and four sons, Thomas Warthen Evans, an attorney at Dublin, Ga.; Julian Richard Evans, a merchant of Sandersville, Ga.; George Reese Evans, now a student in the University of Georgia, and Irwin Lumpkin Evans, twelve years of age. Another son, Beverly D. Evans, Jr., First Lieutenant, Company D, 20th Machine Battalion, Seventh Division, U. S. A., twenty-two years of age, was killed in action near Preny, France, on November 1, 1918, while fighting for his country and the freedom of mankind.

Such in brief was the life of our departed brother. What an inspiration it must be to those who are left and who were his juniors in years. What a stimulus it is to those who were his seniors in years conscious of the limited time remaining for service to others. His whole life may be summed up in one word, faithfulness. He was faithful in every relation, in private life and public station. The writer sustained close relations with him, admired him as a magistrate and loved him as a man.

Let the words as written though far from adequate to do full justice, stand as the simple tribute from a friend and former associate in serious and perplexing work.

Some day the judiciary history of Georgia will be written by a capable hand, and when it is the name of Evans will stand high in the judicial annals of the State he loved so well and served so faithfully.

## MEMORIAL OF ROBERT LEIGH BERNER.

BY ROLAND ELLIS, OF MACON.

The printed page may perpetuate the record of the deeds a man has done, but the subtle something which made those achievements possible passes with his spirit.

Colonel Robert Leigh Berner died May 13, 1922, at Macon in the center of the State in which for years he was a conspicuous figure. He was born in Jasper County, April 21, 1854. Prepared by his father, who was a noted school teacher, he entered the University of Georgia and received his A.B. degree at the age of seventeen. He studied law in the office of Colonel A. D. Hammond, and was admitted to the bar in 1873. Most of his professional life was spent in Forsyth, but in his later years he removed to Atlanta to become associated with Honorable Hoke Smith. Thence he came to Macon where he practiced actively for twelve years. He married Miss Clifford Napier, of Forsyth, who, with one daughter, survives him. He took an active interest in public affairs, represented his county in the General Assembly, was President of the State Senate, Chairman of the Democratic Executive Committee, a candidate for Congress, and for the office of Governor, and under President Cleveland held an important position in the Department of the Interior. In 1898 he entered the military service of the United States as Lieutenant-Colonel of the Third Georgia Volunteer Infantry, rose to be Colonel of that Regiment, and commanded it until it was honorably mustered out in April, 1899.

It is possible thus briefly to refer to some of the events in his busy life, but that which, for want of a better name, we call his personality, may not be caught and held within the four corners of a memorial.

It may be said of him that he was a statesman; but none who has not seen him in legislative halls or on convention floors fighting for what he believed meant the freedom of his people can realize the influence which he exerted in shaping the destiny of his State.

It may be told of him that he was an orator; but only those who have felt their spirits wooed by the witchery of his pleading or their wills overmastered and swept on with the torrent of his impassioned words can understand how eloquent he was.

It may be written of him that he was a successful practitioner; but only those who have seen the well-woven fabric of their cases cut to ribbons by his slashing wit or the carefully built structure of their defenses beaten down and demolished by the weight of his argument can comprehend how formidable an opponent he was.

It may be related of him that he led a Georgia regiment to Cuba while the nation was at war; but only those who have looked upon that superb figure, straight as a reed from his own Georgia brakes, or caught the flash from those dark eyes as the troops swung past, can visualize the soldier that he was.

It may be stated of him that he was a scholar; but only those who have sat for hours under the spell of that perfectly trained voice and heard again the rolling periods of orators silent for two thousand years, the songs of forgotten poets, the speeches of characters long passed from the stage, can be sure that all literature had been laid under tribute to fill the treasury of his mind.

It may be recorded of him that he was no ordinary man; but only those who have come under the influence of that remarkable personality can know how far above the level of common-place mediocrity he towered.



## MEMORIAL OF JAMES LeCONTE ANDERSON

BY THE COMMITTEE

James LeConte Anderson, born in Macon, Georgia, June 29, 1864. Son of Clifford Anderson and Anna LeConte (Anderson).

On his father's side he was descended from a long line of distinguished Virginians, his original ancestor having come from Atholl, Scotland to northern Virginia in the middle of the Eighteenth Century.

His father, Clifford Anderson, was born and raised in Nottoway County, Virginia, his father having removed from the northern part of Virginia to the Southern part after his marriage to Miss Mary Robertson, who then lived in Nottoway County.

Among the Anderson ancestors of distinction was Col. Richard Anderson, an officer in the Revolutionary Army. Also on his paternal side he was a first cousin to Sidney Lanier, the American poet, Sidney Lanier's mother having been the oldest sister of the father of the subject of this sketch.

On the maternal side the family is of equal distinction through many generations. His mother was the niece of Doctors Joseph and John LeConte, the distinguished scientists who won national distinction in their respective specialties. His grandfather LeConte was Dr. Louis LeConte, who in his day was the most distinguished naturalist and botanist in this country.

The first LeConte ancestor who settled in America was born and raised in one of the southern provinces of France and was a member of the nobility, with the title Count. He was antagonistic to King Henry at the time of the revocation of the Edict of Nantes and joined the forces against the King's army when Protestant France rebelled. He was

obliged to flee from France and went to Holland, where shortly afterwards, having always been a soldier, he tendered his sword and services to Prince William of Orange. Desiring, however, to appear incognito while fighting his own country, he was known in the army only as General LeConte (the Count). Properly spelled the name was of course Compte. After the Flemish War, General LeConte came to and settled first on the Island of Santo Domingo with a French Colony there, where he bought considerable lands and slaves. Being dissatisfied, however, with the climate of this Island, he sold his possessions there and moved to the coast of New Jersey. He brought his wife with him to America, but the family were not prolific and he had but one son, who married in America. Finally, just before the Revolution, the descendant of the original settler bought large tracts of land in Liberty County, Georgia. This ancestor had two sons, one of whom was Louis LeConte, the grandfather of the mother of the subject of this sketch. When William LeConte, of New Jersey, died, his two sons divided his estate, Louis taking the Georgia properties and John or Jack, as he was commonly called, the properties in the north, which were mainly in and around the City of Philadelphia at that time. From these two came two separate branches of the family and there are today not more than half dozen in either branch bearing the name LeConte. The original LeConte ancestor never resumed his patronym but he and his descendants continued to be called LeConte, having Anglicized the name as much as possible.

Also, on the maternal side, the subject of this sketch was descended from the Nisbets, his mother's mother being a sister of Judge Eugenius A. Nisbet, one of the first and ablest members of the Supreme Court of Georgia. The Nisbets are a Georgia family of wide connections and have produced many able and distinguished men.

James LeConte Anderson was educated in private schools in the City of Macon, and in Mercer University, also lo-

located in the City of Macon, from which latter Institution he graduated in June, 1883. He immediately began the study of law under his distinguished father, who was at that time regarded throughout the State of Georgia as without a peer as a great lawyer. About a year after his graduation from Mercer he was admitted to the Bar in Macon, and went at once into his father's firm and continued a partner with his father, and until his death, R. S. Lanier, the father of Sidney Lanier, until his father's death, which took place in 1899. He won a high reputation as an analytical and profound lawyer in Macon and was regarded there and in the surrounding territory where he was known, as a very strong, able lawyer.

In 1901 he moved to Atlanta, Georgia and formed a partnership with his brother, Clifford L. Anderson, and was a member of the firm of Anderson, Felder, Rountree & Wilson when Anderson & Anderson were consolidated with Anderson, Felder, Rountree & Wilson in 1907.

When the firm of Anderson, Felder, Rountree & Wilson was divided by the retirement of Clifford L. Anderson and Daniel W. Rountree on the first of January, 1913, he remained with Mr. Felder in the firm which was formed by them. Later he retired from that firm and became a member of the firm of Westmoreland, Anderson & Smith but at the time of his death he had been practicing alone for several years. During his practice in Atlanta he had personal charge of many very important cases and he earned a wide reputation as a great lawyer.

Mr. Anderson was married in 1885 to Miss Mary Jones, of Macon, Georgia, daughter of Mr. Bruce Jones, a prominent business man of the city of Macon, and a member of one of the oldest and best known families in middle Georgia, who survives him. He also leaves three daughters surviving, Mrs. Samuel W. Willson, of Atlanta, Ga.; Mrs. John G. Chapman, of Talladega, Ala., and Mrs. John Pearson, of Manhattan, Kansas, and several grandchildren.

## CONFERENCE OF STATE AND FEDERAL PROSECUTING OFFICERS.

In response to a request from the Attorney General of the United States, the Attorney General of Georgia called a meeting of State and Federal prosecuting officers in Georgia to meet at Tybee in connection with the meeting of the Georgia Bar Association. The meeting was held as called. Below are given the letter of the Attorney General of the United States, requesting that the meeting be called and minutes showing action taken by the meeting, as furnished to the Secretary by those attending the conference:

Washington, D. C., Dec. 27, 1921.

Hon. George Napier,  
Attorney General of Georgia,  
Atlanta, Ga.

My Dear Mr. Attorney General:

The Department of Justice of the United States is very desirous of lending its aid to bring about a complete and effective working system with all law enforcement officers, and especially with the legal branches of the several states of the Union. This co-operation will not only insure a reduction in expenditures, but also a more prompt enforcement of existing laws, as well as a uniformity in proceedings, sentences and fines. This will all make for a better understanding among the people. It will also afford an opportunity for the several states, without duplication with the federal government, to enforce the laws which should be enforced by state authorities and leave for the federal government such duties as devolve upon it.

The two principal offenses which I now have in mind are those against the liquor and the food and fuel supply laws. There is no disposition on the part of the federal government, as represented by the Department of Justice, to evade any responsibility in respect to its duties, but the states, I believe, should first enforce their laws in regard to the viola-

tions and the federal government promptly co-operating with the states enforce the laws which should be enforced by the federal government. There are substantial duplications in many of these laws, as you are well aware, and a better understanding between the state authorities and the federal authorities will prove most beneficial to both in the enforcement of the prohibition and the food and fuel laws pertaining to prices. This co-ordination of powers will aid especially municipal authorities, Chambers of Commerce and state authorities in their respective efforts to reach violations for extortion in the prices now maintained.

As many of these infractions are intra-state cases, there will arise doubtful questions whether a violation of the law in the matter of fixing prices by certain local retailers is one over which the federal government has jurisdiction. With this subject in mind and the object in view, as stated, to bring about the most harmonious, as well as coherent, working arrangement between state officials and those charged with the federal enforcement, I respectfully suggest that you, as the chief executive law officer of your state, call a conference of the prosecuting attorneys of the several counties of your State for the purpose of discussing plans to bring about the object desired. In so doing I would be pleased to have you invite the United States Attorneys located in your State to attend in order that they too may co-operate with you and all become better acquainted and become more familiar with the respective duties devolving upon each of us.

I suggest the advisability, if it is in accord with your judgment that such a conference be held, that it be called as early in the new year as your duties will permit. In the achievement of this most necessary objective I am quite confident I can depend upon you and the law prosecuting branches of the several counties of your State, and I personally assure you that the Department of Justice and all of its agencies will cheerfully contribute to the extent that their assistance may be required or requested. I shall be glad to hear from you.

I am sending a similar communication to each of the Attorney Generals of the several states.

Wishing you the compliments of the season, I am,

Yours sincerely,

H. M. DAUGHERTY,

Attorney General.

As a result of a resolution adopted yesterday afternoon at a conference of United States district attorneys, solicitors general of Superior courts and solicitors of City courts, it is expected that there will be an elimination of duplicate prosecutions for the same offense in the State and Federal courts.

This conference, called by Attorney General George M. Napier, at the instance of United States Attorney General H. M. Daugherty, has in adopting the resolution promulgated a policy which it is expected will be followed by the law enforcement officials throughout the state.

Following is the resolution:

"Resolved, By the meeting of United States district attorneys, solicitors general and solicitors for city and county courts, called to consider the question of co-operation as stated in the letter of Attorney General Daugherty to the Attorney General of Georgia, and especially as elaborated in the very able speech of United States Judge Samuel H. Sibley:

"We pledge ourselves to the principle of co-operation in the enforcement of the laws where Federal and State courts have concurrent jurisdiction, and in so enforcing the law as to eliminate duplicate prosecutions for the same transaction, and in such manner as to promote the greatest efficiency of the courts."

It is freely admitted that the principal effect of this resolution will be found in liquor law cases. In future, under this resolution such an offender will be tried in either the State or Federal court—most likely in the former—but will not have to answer for the same offense in both courts as has often been the case in the past.

## REPORT OF THE COMMITTEE ON LEGAL ETHICS AND GRIEVANCES.

### *To the Georgia Bar Association:*

Your Committee on Legal Ethics and Grievances herewith submits its report for the past year.

The following is a brief summary of each case. In no case did facts develop that seemed to justify the Chairman calling into service the entire Committee.

1. Complaint against a non-member of the Bar Association that there had been sent him for collection a check for \$92.85 and the court costs had been paid for bringing suit, and no accounting could be had. The Chairman of this Committee wrote to the party complained of and also to another member of his local bar. The report from this latter member was altogether unfavorable and recommendation was made to the complainant that prosecution be had, the name and address of the Solicitor General of that circuit being furnished. The complainant advised: "We will take this matter up with the next Grand Jury and see if we cannot have him indicted."

2. As indicative of the trifling nature of most of the matters, this was a complaint against a firm, neither of whom is a member of the Association, for failure to return papers. The Chairman of this Committee immediately wrote to the parties complained of, but, before his letter was received, the papers had been returned to the complainant.

3. This is a complaint against a member who admits that he collected some \$33.57. Against this he claims an offset for certain fees and expressed a willingness to settle so soon as this claim should be allowed. This matter is still pending.

4. This was a complaint of inability to get a reply from an attorney to whom a claim and \$3.00 for costs had

been sent. There was no charge of a crime and the party complained of is not a member of the Association. The Chairman of this Committee wrote the party complained of but did not feel justified in pursuing the matter further.

5. This party is not a member of the Association. The charge was definite, and seems to have been supported by evidence, that he had collected \$190.00 and had failed to remit. It was recommended to the complainant that prosecution be had, and the name and address of the Solicitor General were furnished.

6. This complaint was that \$19.70 had been collected and not paid over. The evidence seemed conclusive, inasmuch as a check covering the same was sent but was not paid upon presentation. It was recommended that this man be prosecuted and the name and address of the Solicitor General were furnished.

7. It is a pleasure to report that, after considerable correspondence, one of the claims pending at the close of last year has been satisfactorily adjusted.

8. This is a complaint against a member of the Association. The extent of it seems to be that \$5.00 had been sent to cover costs for bringing suit and a reply could not be obtained by the complainant, who is the manufacturer of "Rat-Annihilator," and he desired the assistance of our Committee to see whether or not suit had been brought. This complaint was not followed up by the complainant.

9. This complaint is from a complainant who apparently sells imitation jewelry, and who has made several complaints to assist in collections. The facts alleged were that \$50.00 had been collected and not paid over. Recommendation of prosecution was made, and the name and address of the Solicitor General were furnished. The party complained of is not a member of the Association. Nothing further has been heard from this.

10. This complaint has recently come in and is against a member of the Association, to the effect that two claims for substantial amounts, aggregating some \$1,150.00, with



a retainer fee, had been sent to the attorney the early part of this year, since which time no response could be obtained to letters. Your Chairman at once wrote to the attorney complained of and has heard nothing further from him or from the complainant, which would indicate that the matter has been settled. However, he is again writing to the complainant.

11. This is a complaint against a non-member as to the supposed collection of \$104.00 and no accounting for the same. The attorney complained of sets up certain facts that would seem to relieve him of culpability. This matter has not yet been brought to a conclusion.

12. This is a complaint against a member of the Association, involving the collection of two small claims and omission to remit. Your Chairman is in receipt of a letter from the attorney complained of, under date of the 8th of May, indicating that he has remitted in full. Reply has not yet been had from the complainant confirming this.

All of which is respectfully submitted.

WM. H. BARRETT, Chairman.

May 22, 1922.

## REPORT OF THE TREASURER.

*Mr. President and Members of the Georgia Bar Association, Ladies and Gentlemen:*

This is my 32nd report as Treasurer of this Association. Thirty-two years of service stamped with your approval is a record of which I am proud. That record has been made possible by your constant and most gracious favor which, always, I have deeply appreciated.

Any affiliation that strengthens good fellowship among the members of whatever profession, through an association formed to foster and maintain that profession's ethical rules, is helpful to every member. Especially is this true of the legal profession. Every true lawyer is a minister of law, human and divine. Most surely, then, the ministry of law is a high calling. But I must not venture upon this theme. It extends far beyond the limitations of a treasurer's report. My purpose now is only to emphasize my appreciation of your uniform kindness to me during the thirty-two years of my service as your treasurer. You have made easy and enjoyable a service which otherwise might have become irksome and vexatious.

The functions of the office have brought me into immediate and individual touch with every member, thereby enabling me to discern a common purpose to sustain this Association for the general good of our profession and of the State.

In the ancient and beneficent Masonic fraternity 32, is I believe, traditionally, a magic number. Those who attain the 32nd degree have reached a certain enviable eminence and are arrayed in gorgeous regalia. Chronologically, I have reached my 32nd degree in the service of this Association and I am not without regalia. At our meeting in the year

1918 you conferred upon me the degree of M.L., which means you gave to me *causa honore* a life membership in this Association, a distinction you have rarely granted. It was delivered by a learned and distinguished ex-justice of the Supreme Court of Georgia, honored and admired by all the people of this State and by all others within the sphere of his influence, which embraces the American Bar, the Honorable Andrew J. Cobb. By his fine distinction of manner and of word in conferring the degree, he made its delivery most impressive and inspiring to the recipient, which delivery in one voice you generously acclaimed. The proceedings were not highly ceremonial, but all the more moving because entirely spontaneous. Surely your kindness hath followed me all the days of my service and I have been abundantly rewarded.

To me it seems fit that in this my final report as your treasurer I should give, while I may, this expression to the feeling of appreciation I have for all of your kindness.

In laying down the Treasurership, I have no thought of bidding farewell to this Association. I trust I have many years in which to enjoy these our annual meetings; but I would shift the burdens of office to younger strengths. When a man is nearly four score years he should begin to enjoy the emoluments of age. I count among those emoluments a larger freedom and a new-found idleness. Idleness is bad, no doubt, for boys, but it becomes graciously beneficent to oldish people. When a fellow's almost eighty he ought to be able to take a day off whenever he wants to go a-fishing. Isn't it Stevenson, who in writing in delightful vein in praise of Idleness says, "Perpetual devotion to what a man calls his business is only to be sustained by perpetual neglect of many other things. And it is not by any means certain that a man's business is the most important thing he has to do." I accept Stevenson's hint that sometimes the most important thing a man has to do is to go a-fishing, or in other words, to loaf and invite his soul. And right here let me beg you youngsters to take it from an old man that if, in the hot

pursuit of business, you postpone until eighty inviting your soul one of two things will surely happen, either you will not be here at eighty or you will have no soul to invite.

So what I propose now in my further relationship with this Association is that I take mine ease. Perhaps I shall not be altogether a cumberer of the ground. Perhaps it may be granted me to hearten those who are bearing the heat and burden of the day with stories of great and good who are gone, the soldiers, saints and seers of the Georgia Bar whom I have had the high privilege of knowing. Perhaps, too, it may be given me to encourage those who despair of the age in which we live, who cry out against it as a time of unbridled license, of no respect for laws, and prophesy that this old world of ours is fast going to the bow wows. To these I would say,

"This fine old world of ours  
is but a child,  
yet in the go-cart. Patience!  
Give it time  
to learn its limbs.

There is a hand that guides;"

For one of the precious gifts of length of days is an increasing faith in the amplitude of time. Fifty years ago or more the gifted Henry Grady called me "Young Z. D. Hopeful." Now, nearly eighty, I am still "Z. D. Hopeful." I believe in the happy ending.

So with this word that is not a farewell but a heartfelt "I thank you" and a cheerful prologue, I trust, to our pleasant associations in the years to come, I submit herewith a statement of account, which has been audited by the Executive Committee:

Z. D. HARRISON, *Treasurer*, In Account With

THE GEORGIA BAR ASSOCIATION

To balance June 2, 1921.....	\$1,031.35
To dues collected since June 2, 1921.....	2,550.50
By voucher No. 1—Badges for 1921 and 1922.....	\$ 167.62
By voucher No. 2—Hotel Tybee.....	65.00
By voucher No. 3—Expenses of Secretary.....	111.79

## TREASURER'S REPORT

By voucher No. 4—Edwd. Crusselle.....	121.90
By voucher No. 5—Byrd Printing Co.....	26.50
By voucher No. 6—Murray Printing Co.....	7.00
By voucher No. 7—J. W. Burke Co.....	49.75
By voucher No. 8—M. Baum.....	10.00
By voucher No. 9—Sylvanus Morris.....	6.51
By voucher No. 10—Central Bank & Trust Corp.....	36.40
By voucher No. 11—J. W. Burke Co.....	1,846.85
By voucher No. 12—Advance payment for music.....	56.42
By voucher No. 13—Salary of Secretary.....	300.00
By voucher No. 14—Salary of Treasurer.....	150.00
	<hr/>
Cash balance June 1st, 1922.....	\$2,952.47
	629.38
	<hr/>
	\$3581.85 \$3581.85

Z. D. HARRISON, Treasurer.

Examined and Approved, June 1st, 1922.

ALEX. W. SMITH, JR.,

Acting Chairman Executive Committee 1922.

REPORT OF PERMANENT COMMISSION ON  
REVISION OF THE JUDICIAL SYSTEM AND  
PROCEDURE IN THE COURTS.

*To the President and Members of the Georgia Bar Association:*

The Commission has had no meeting this year. The Chairman did not call the Commission together for the reason that it seemed that the attention of the next General Assembly would be so much absorbed with matters disconnected with law reform, that the time was not opportune to lay such matters before them.

It appears from the recent reports of the Commission that there is a difference of views among its members as to the further continuance of the Commission.

Whether the Commission shall continue is submitted to the determination of the Association.

Respectfully submitted,

ANDREW J. COBB, Chairman.

REPORT OF THE COMMITTEE ON  
JURISPRUDENCE, LAW REFORM AND  
PROCEDURE.

*To the President and Members of the Georgia Bar Association:*

Your Committee on Jurisprudence, Law Reform, and Procedure submits the following report:

Many suggestions of proposed changes in our statute laws have been submitted to your Committee, many of them of merit, many of which, however, have been previously called to the attention of this Association.

Legislative reforms usually come in response to some imperative need manifested through a substantial public opinion or demand therefor. The legislature has been slow to follow the recommendations of this Association, but through the influence of the members of this Association properly exerted upon the legislature needful reforms can be put into statute.

Your Committee is of the opinion that we are suffering from too many hastily enacted statutes, and has no special reform to present for your consideration, except one, and this one, in the opinion of your Committee, is of great necessity.

Your Committee is of the opinion that something should be done to expedite the disposal of cases in our appellate courts. Justice delayed is frequently justice denied, and the slow process of having cases heard and decided in the appellate courts of Georgia has reached such a point that this Association should take some definite action to insure a more speedy disposition of cases in the Supreme Court and the Court of Appeals. There are many cases now pending in

our Supreme Court supposed to be on fast writs, where the delay has been so great that the rights of the parties have been jeopardized and in some instances lost. There have come to the attention of your Committee several instances of such cases. The delay in this Court has frequently worked an absolute destruction of the rights of the parties. Something must be done. Rights of litigants should not be destroyed by inactivity of courts, and if these tribunals will not correct the defect by their own motion, some appeal should be made to the legislature for relief.

Various reforms have been suggested, but each and every one proposed has met opposition and nothing has been done. Your Committee has been informed that a proposal was made in the Court itself by which a number of cases were to be taken up, argued and decided each week, and this reform, if put into effect, would have helped this situation. But some members of the Court, for reasons of their own, refused to permit any change to be made, and we are therefore confronted with the proposition of having the rights of our clients destroyed because the courts will not properly function.

Your Committee would respectfully recommend that a committee be appointed from this Association, clothed with authority to take this matter up with these respective courts, and to aid in working out some reform which will insure a speedy disposition of all cases in the appellate courts of Georgia, and if these courts determine that they cannot remedy the defects of their own motion, then said Committee should be authorized to go before the legislature and urge some statute that will insure relief.

Respectfully submitted,

W. CARROLL LATIMER,  
Chairman,

H. F. LAWSON,  
JOHN B. HARRIS,  
T. S. HAWES,  
L. W. BRANCH.



## REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

This Committee recognizes the superiority of the training afforded by a good law school to that to be had by a law student without it. The conditions under which, years ago, a practicing lawyer took a student into his office and became his legal preceptor, no longer exist. We likewise realize that the better the law school, the longer its course, the more full time instructors it has, and the adequacy of the library available for its students, the more often will it be able to give assurance that its graduates will be qualified to enter on the practice of law. We also appreciate the fact that it would be advantageous from every standpoint if it were made a condition to such law schools that the matriculate must have had previously at least two years training in a college.

We join with the American Bar Association and with Bar Association delegates in conference at Washington in February last, in the view that it would be desirable if every candidate for admission to the bar could present evidence of graduation from a school complying with the standards indicated above. Our National Association and particularly its section of legal education and admission to the bar, deserve the thanks, not only of the bar everywhere but the whole people of this country for the signal service it has done in emphasizing the necessity for a more thorough professional training, of a broader preliminary, general education for law students and for insisting on more carefully safe-guarding the entrance so as to lessen the number of those who are morally unfit to become members.

That we have among our Georgia Bar those who have

not had that amount of general education necessary to a proper study and practice of the law; that we have those attempting to advise clients and to try cases when they are woefully deficient in law knowledge; that we have some whose moral character is far below what a lawyer's should be, in other words, that there are those who have licenses to practice, who ought never to have been admitted, is lamentably true and we should lend our aid toward keeping their kind from having either recruits or successors.

There are four chartered law schools in Georgia. Three of the four are integral parts of Universities. One of the four—the Lamar School of Law, Emory University—has for some time past, complied and is now complying with every requirement of those suggested by the American Bar Association. One, the Lumpkin Law School, University of Georgia, now complies, and another, the School of Law of Mercer University will, beginning with the fall session of 1923 comply with every requirement of the American Association of Law Schools standards, as those standards existed prior to December 31st, 1922, to-wit, every demand of the American Bar Association, save that requiring two years of College work before one can matriculate in law. In other words, the law department of Emory University already has as high a standard as that set by the standardizing agency of legal education in this country and the University of Georgia and Mercer University are prepared to meet these requirements except that in the last two named schools, applicants for admission thereto are required to make satisfactory proof of having completed four years of high school work or the equivalent thereof, but are not required to have, as a condition of admission to the law school, two years of college training. Each of the three schools above named are now requiring three years of satisfactory law school work before graduation, has the adequate library facilities and have at least three full time instructors besides other law lecturers. The fourth law school of Georgia is the Atlanta Law School, which is not connected

with a university but is a night school and has a two year course. Its requirement for entrance is that:

"The applicant must satisfy the Faculty that he has sufficient English education to enable him to do the work of his class thoroughly and understandingly."

While some of this Committee would like to see the Georgia Bar Association commit itself to the high standards adopted by the American Bar Association, which would limit all applicants for admission to the bar to those holding diplomas from law schools having the strict requirements above referred to, we are agreed that sentiment in our State would not, at this time, support us in taking so advanced a step; and that for some time at least, there will be those who will enter the ranks via the Board of Examiners and without ever having attended a law school. There is a considerable number each year who take these examinations and pass them and not a few who do are those who have studied but for six months in a law school and others who have crammed in less time, and some who have read without any preceptor. So long as this is true, your Committee thinks that we should place our emphasis there and seek to amend our statutes, which permit this to be done. The Bar examiners themselves are helpless to remedy a condition which permits the ranks of the bar to be annually augmented by those who have neither the character, the educational back-ground, nor sufficient knowledge of the law to permit them to enter the profession. By the bar examining route come infants, men born under any flag, who have never even been naturalized, persons who have a very limited education, who have never attended even a high school, who have no acquaintance with English or American history, who have never theretofore come into contact with lawyers, who know nothing of the traditions of the bar or its ethical standards. "Brethren, these things ought not so to be."

The law schools of Georgia have more than once lengthened their courses and in other respects made it more difficult to graduate. These things they have done volun-

tarily, without the compulsion of any statute; but for years and years, the standards have remained the same for those who enter the profession through the other avenue. Law is no longer one of the learned professions. To be an attorney and counselor-at-law, does not necessarily mean to be a scholarly man. And yet, from our ranks are recruited our judges, the vast majority of our law makers and chief executives. No matter how loose a man's moral character may be, it is difficult under the present statutes to keep such a man from obtaining a license. When once admitted, it is next to impossible to have his name stricken from the rolls. Besides there are many practices which an attorney may indulge in which are far from honorable and yet, fall short of things which would justify disbarment proceedings, under our statutes.

It is respectfully submitted that it is no answer to these reflections to point to those who have obtained eminence in the profession who had only a meager education and only a short course of preparation before coming to the bar. Nor is the argument sound which is based on the premise that everyone who wants to become a lawyer should be admitted on the idea that the public will find out those who are inefficient and unworthy; for in the meantime, the public suffers and so does the character of our profession. Nor' should anyone be convinced by the argument sometimes presented that we ought to give everyone a chance and that it is unfair to put barriers in the way of those who wish to seek fame and fortune as lawyers. This last so-called argument overlooks the effect on the public of such a course. This question should be approached from the standpoint of the general good. No one should be admitted to practice law even though that one could, at the law, make a respectable living, unless his admission would be consonant with the welfare of the public. Equal opportunity does not mean that every one who has a notion that he wants to practice law should be entered in a mad race for business regardless of the conse-

quences on those whom he serves. A considerable part of the public, and those least able to bear it would seriously suffer. The patient may die while the quack is experimenting.

Your committee has nothing radical to recommend. Indeed, each of the suggestions about to be made, have more than once received the approval of this Association and most of them several times; but if they should be adopted and receive legislative sanction, we believe that it would redound to the public good. We think that our State should keep step with the movement now being pressed in all of the States, to raise the standards of admission to the bar. While conditions with us may not be as bad as those prevailing in other parts of the union, the public has suffered by reason of the ease with which at present a man obtains a license to practice law in Georgia. It is the view of this Committee that this Association should do its part to uphold the hands of those who are trying to elevate the character of the American Bar and to that end, we recommend that our Committee on legislation prepare bills and ask the General Assembly to enact them into law embodying the following suggestions:

(1). A bill to provide that none but citizens of this State can be admitted to the bar.

(2). Repealing Sections 4946, 7, 8 and 9 of the Code—our law of comity whereby persons having license to practice law under the laws of other States may be permitted to practice in our State by undertaking such an examination here as may, in his discretion be required by any Judge of the Georgia Superior Court.

(3). Require that the applicant, before he takes the bar examination, shall make satisfactory proof of having completed four years of high school work or the equivalent thereof.

(4). Require the applicant at least two years before he takes the examination to register with the Board of

Examiners giving his name and address, the name and address of some lawyer under whom he expects to study law and also furnish references as to his moral character and education. Require that the application for registration shall also be accompanied by a written statement of some Georgia lawyer of at least ten years' practice, that he will faithfully supervise and direct the preparatory studies of the applicant for at least two years and will faithfully assist the student in his endeavor to acquit himself for the practice, that he believes the registrant to be of high moral character.

(5). Once, soon after the applicant registers with the Board of Examiners and again subsequent to his examination, to have a Judge of the Superior Court of his residence to appoint a Committee of lawyers to make a thorough examination as to the moral character of the applicant and to report the same to the Judge, who shall forward the same to the Bar Examiners; and to have a like examination and report made and forwarded at the time the examination is taken, this Committee of lawyers to act under general rules to be promulgated by the Board of Examiners.

(6). Provide that each applicant at the time he reports for his examination, shall present a certificate of a lawyer of this State with a least ten years practice, that the applicant has regularly and faithfully for at least two years studied law under the direction of such attorney; that the attorney has frequently quizzed him and believes him to be proficient in law, that his moral character is high and that in the opinion of such attorney, he, the applicant, is qualified to begin the practice of law.

(7). Give the Board of Examiners power and make it their duty to make, from time to time, other and further investigations as to the character of the persons who have registered for examination.

(8). A requirement that the applicant shall stand both oral and written examinations before the Judge of the Superior Court and that said examination shall cover at least two days work.

(9). Give the Board of Examiners authority to enlarge the scope of examinations instead of limiting them as they are now limited by Code 4935.

Respectfully submitted,

WARREN GRICE, Chairman;

SYLVANUS MORRIS,

J. D. BLALOCK,

R. O. JONES.

## REPORT OF THE COMMITTEE ON LEGISLATION.

*To the Members of the Georgia Bar Association:*

No matters requiring legislation were referred to the Committee on Legislation by the Association at its last meeting. Therefore, nothing was presented to the Legislature and the committee has no report to make of any action taken by it as representing the Association.

B. J. FOWLER, Chairman.



## REPORT OF SPECIAL COMMITTEE ON FEDERAL COURTS.

*To the President and Members of the Georgia Bar Association:*

Pursuant to a resolution passed at the annual meeting of the Georgia Bar Association in 1921, President A. G. Powell appointed a committee, composed of H. H. Swift, C. G. Edwards, Sam S. Bennet, M. J. Yeomans, Luther Z. Rosser, Chas. L. Bartlett, Barry Wright, Albert C. Foster, W. A. Charters, John T. West, John W. Bennett, and A. S. Bradley being one member from each Congressional District, for the purpose of presenting the views of the Association and taking such action as might be necessary with respect to the congested condition of the dockets of the United States Courts of this State and for the purpose of considering whether a new judgeship should be created, or a new district should be created.

The Chairman conferred personally with Judge Sibley of the Northern District of Georgia, and by correspondence with the late Judge Evans of the Southern District of Georgia, and their opinions and suggestions were invited.

Judge Evans wrote the Chairman on July 9, 1921, stating that the reports from the different Divisions in the Southern District of Georgia showed an increase of about 25 to 50% in the civil business of the Southern District of Georgia, and more than 50% in the criminal business for the fiscal year ending June 30, 1921. He stated that the large increase in criminal business was due largely to the National Prohibition Act. He then said:

"I am unable to suggest a remedy without a more thorough acquaintance with conditions prevailing throughout the entire United States. In other words, I do not think

the matter should be dealt with locally, if conditions could be met by general legislation, applicable to the whole country."

Judge Sibley deferred expressing his opinion until after reports had been compiled by the District Attorney and the Clerks of the Northern District of Georgia for the Attorney General. With the substance of those reports before him, Judge Sibley stated that it was "evident beyond controversy that the accumulation of misdemeanor business in this District (Northern) is such that relief is absolutely necessary." Judge Sibley expressed a preference for some form of relief which would relieve the District Judges of the trial of misdemeanor cases. He favored, if permissible, the establishment of inferior tribunals to handle this class of cases.

An ineffectual effort was made to have a meeting of the Committee on July 16, 1921 in Atlanta. A quorum of members did not attend the meeting. The five members of the Committee who did attend the meeting agreed that it would be best to postpone any further meeting of the Committee until after the annual report of the Attorney General for the fiscal year ending June, 1921, had been made, as it was understood that the Department of Justice would not give consideration to the question of whether a new district should be created in Georgia or an additional Judge appointed, until the reports of business for the fiscal year ending June 30, 1921, had been received.

Subsequent to the attempted meeting of the Committee in July in Atlanta, it was learned that the Attorney General of the United States had named a special Committee of lawyers from all over the United States to consider the general question, and to confer with the Department of Justice, and the Judiciary Committees of the House and the Senate. The Attorney General also invited certain judges into conference with him on the subject. The attitude of the Department of Justice and the majorities of the Judiciary Committees of the House and the Senate, made it plainly evident that the recommendation and views of those not invited to express

themselves on the subject, would receive scant consideration. For this reason and for the further reason that the newspapers published that a bill was to be passed by Congress, providing for eighteen additional judges of the Federal Courts, two from each of the Circuits, the Chairman and the Committee felt that it was useless to have another meeting of the Committee.

A bill was passed by the House of Representatives, providing for additional judges, which did not include any relief for Georgia. In the Senate the House bill was amended so that an additional Federal Judge was provided for Georgia to serve in both the Northern and Southern Districts of Georgia. The House rejected the Senate amendment, and the question on the Senate amendment has been referred to, and is now being considered by a Conference Committee of the House and the Senate. Both Senators from Georgia voted against the bill in the Senate, and it is unlikely that the Senate amendment for an additional judge for Georgia will be accepted by the House. The Senate amendment in which provision was made for Georgia, provided for twenty-three additional District Judges in the United States. The opposition of the Georgia Senators was caused by their opinion that it was a partisan pork-barrel measure.

Several weeks ago, the Chairman communicated with the different members of the Committee, and the Committee was unanimously of the opinion that a meeting of the Committee would be ineffectual to accomplish anything and was unnecessary, in view of the situation in Washington. Very great diversity of opinion exists between the members of the Committee, both on the subject of a third judge for Georgia, and the creation of a third district in Georgia at the present time. Perhaps at another time, with different influences in power, greater accord might be obtained.

Six members of the Committee are in favor of the creation of a third judge at the present time. Four members of the Committee are opposed to the creation of a third

Judge, and two members of the Committee expressed no opinion.

On the question of the creation of a third district, four members of the Committee expressed approval and five are decidedly opposed and three expressed no opinion.

The Committee is in substantial accord that some change or correction is necessary either by the creation of a third judge or the creation of a third district, or the enactment of legislation, national in its scope, creating inferior tribunals. The committee believes that with two such capable judges as Judge Sibley of the Northern District of Georgia, and the lamented Judge Evans of the Southern District of Georgia, it would not be necessary in order to dispose of all civil business and all felony cases, for either a third judge or a third district to be created. The enormous accumulation of misdemeanor cases in the courts requires some relief for our over-worked Federal Judges in Georgia, else the rapid accumulation and congestion of criminal cases will become such that it will be almost impossible to obtain trial of civil cases, and trials of criminal offenders will be long delayed.

Attached hereto is a tabulated statement taken from the report of the Attorney General of the United States for the fiscal year, 1921, showing the cases commenced, terminated, pending and tried by jury for the fiscal year 1921 in the two Federal Districts of Georgia, the two adjacent States of Alabama and Florida, and in the states of Pennsylvania and Illinois. The cases have been classified, so as to show criminal cases, civil cases to which the United States is a party and civil cases to which the United States is not a party. This statement is really startling as to the number of cases which are being commenced, disposed of, and tried by jury and which are pending in Northern and Southern District of Georgia. For the fiscal year, 1921 there were 1993 criminal cases commenced in the Northern District of Georgia, and 926 criminal cases were commenced in the Southern District of Georgia. For the same period in the Northern and Southern Districts of Georgia, 2,086 criminal cases were

disposed of during the fiscal year 1921, and in the same two districts of Georgia, there were 823 jury trials. At the close of June, 1921, 3600 criminal cases were pending in the Northern and Southern Districts of Georgia. In the Northern and Southern Districts of Georgia, with only two judges, more civil and criminal cases were commenced than in the five districts of Alabama and Florida with their five judges. A far greater number of cases were disposed of in Georgia by two judges than by the five judges in Florida and Alabama. In Georgia there were 823 jury trials in the Federal Courts. This number was nearly twice as great as in the five districts of Florida and Alabama, or in the six districts of Illinois and Pennsylvania, with nine judges in the latter states to try the business. The two Judges in the Northern and Southern Districts of Georgia disposed of more civil and criminal cases than the four judges in Illinois or the four judges in Pennsylvania. The record constitutes a high tribute to the fidelity, the diligence and the ability of Judge Sibley and the late Judge Evans, whose recent untimely death was no doubt caused by over-work in his effort to dispose of the business in his courts. As great as is the tribute to the efficiency and ability of our two judges, it is equally an argument that some relief must soon be granted by Congress, or the rights of litigants will be denied through delay, and justice will miscarry in criminal cases because it is so long deferred.

Respectfully submitted,

H. H. SWIFT,  
JNO. W. BENNETT,  
SAM S. BENNET,  
M. J. YEOMANS,  
BARRY WRIGHT,  
A. S. BRADLEY,  
LUTHER Z. ROSSER,  
CHAS. G. EDWARDS,

Members of Committee.

# FEDERAL COURTS

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## ALABAMA

	Commenced			Terminated			Jury Trials	Pending		
	Civil U.S. Party	Crim-inal	Civil U.S.not Party	Civil U.S. Party	Crim-inal	Civil U.S.not Party		Civil U.S. Party	Crim-inal	Civil U.S.not Party
Northern	43	884	164	34	851	113	282	30	743	168
Middle	14	55	42	10	87	12	53	10	85	77
Southern	22	153	81	16	119	80	20	20	174	62
	79	1092	287	60	1057	205	355	60	1002	307

## FLORIDA

Northern	12	144	83	23	187	86	25	4	147	58
Southern	196	708	217	115	450	243	97	250	612	492
	208	852	300	138	637	329	122	254	759	550

## GEORGIA

Northern	561	1993	106	296	1395	82	691	559	2347	130
Southern	87	926	178	46	691	113	132	134	1253	216
	648	2919	284	342	2086	295	823	693	3600	346

## ILLINOIS

Northern	232	974	501	160	366	668	37	229	1108	873
Eastern	53	555	96	42	417	67	82	136	276	145
Southern	102	631	74	25	351	60	45	109	567	164
	387	2160	671	227	1134	795	164	374	1951	1182

## PENNSYLVANIA

Eastern	320	571	604	258	490	279	417	283	391	2173
Middle	41	316	84	30	303	60	20	25	1137	293
Western	148	818	197	99	515	129	49	137	453	1862
	409	1715	885	387	1308	468	486	445	1981	4328

## REPORT OF COMMITTEE ON MEMORIAL TO ALEXANDER H. STEPHENS.

*To the Georgia Bar Association:*

Your Committee on Memorial to Alexander H. Stephens in the Hall of Fame submits the following report:

1.

On the 20th day of August, 1921 the General Assembly passed a resolution creating a commission of five persons to be appointed by the Governor charging it with the duty of soliciting and securing funds with which to place in the Hall of Fame in the Capitol at Washington suitable memorials to Alexander H. Stephens and Crawford W. Long. On the 9th day of February, 1921, Governor Hugh M. Dorsey appointed on this commission Dr. Garnett W. Quillian, Mrs. Horace Holden, Miss Millie Rutherford, Mr. W. E. Sirmans, and A. L. Henson, designating Dr. Quillian as Chairman.

2.

Up to this date the Chairman of the Commission has not called its members together and it has not yet had under consideration plans for carrying the Act of the General Assembly into effect.

3.

Your Committee is of the opinion that it should await the action of the Commission appointed by the Governor and that the latter should take the initiative.

4.

Your Committee, therefore, recommends that it be continued that its service may be available to the Commission when the latter calls upon it.

A. L. HENSON, Chairman.

# CONSTITUTION AND BY-LAWS

OF

## THE GEORGIA BAR ASSOCIATION.

Revised by Special Committee Appointed at the  
Annual Meeting of 1906.

Amended and adopted at the Twenty-fourth Annual Meeting,  
Tybee Island, May 30 and 31, 1907.

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### CONSTITUTION.

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#### ARTICLE I.

The object of this Association shall be to advance the Science of Jurisprudence, promote the administration of Justice, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar.

This Association shall be known as the Georgia Bar Association.

#### ARTICLE II.

All members of the bar of this State in good standing shall be eligible to membership in this Association.

The Governor, the Justices of the Supreme Court, Judges of the Court of Appeals, the Attorney General and the Judges of the Superior and City Courts of this State, and the Judges of the Federal Courts resident in this State, and the Clerks of the Supreme Court and of the Court of Appeals, shall, so long as they remain in office, be honorary members of this Association, with all the rights and privileges of regular members without liability for dues.

#### ARTICLE III.

The officers of this Association shall consist of a President,



one Vice-President from each Congressional District of the State, a Secretary and a Treasurer. One of the Vice-Presidents, when nominated and elected, shall be designated as First Vice-President, who shall succeed the President in the event of a vacancy in that office by reason of death, disability, resignation or other cause. (As amended on June 7, 1918. See Report 1918, pp. 12-14.)

There shall also be an Executive Committee composed of the President, Secretary, Treasurer and four members to be chosen by the Association, one of whom shall be Chairman of the Committee.

These officers and the members of this Committee shall be elected at each annual meeting for the ensuing year; but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers and members of the Executive Committee so elected shall hold office from the adjournment of the meeting at which they are elected until the adjournment of the next succeeding annual meeting, and until their successors are elected and qualified according to the Constitution and By-Laws.

#### ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association upon the recommendation of the Executive Committee. All elections for members shall be by ballot. Five negative votes shall suffice to defeat an election to membership.

Except during the meetings of the Association, the Executive Committee shall have power to elect members of this Association.

#### ARTICLE V.

Each member shall pay five dollars (\$5.00) to the Treasurer as annual dues. Payment thereof shall be enforced as may be provided by the By-Laws.

#### ARTICLE VI.

By-Laws may be adopted, repealed or amended at any

annual meeting of the Association, by a majority vote of the members present; provided, that the number voting for such amendment shall not be less than twenty-five.

#### ARTICLE VII.

The following committees shall be appointed by the President all annually, except the Committee on Legal Ethics and Grievances, which shall be appointed quinquennially.

1. On Legislation.
2. On Jurisprudence, Law Reform, and Procedure.
3. On Federal Legislation.
4. On Interstate Law.
5. On Legal Education and Admission to the Bar.
6. On Legal Ethics and Grievances.
7. On Membership.
8. On Memorials.
9. On Reception.

(As amended May 30, 1919. See Report 1918, pp. 19-21, 26, 27, and Report 1919, pp. 24, 144.)

#### ARTICLE VIII.

A vacancy in any office or committee provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until a successor committee shall have been appointed. (As amended May 30, 1919. See Report 1918, pp. 19-21, 26, 27; Report 1919, pp. 25, 145.)

#### ARTICLE IX.

The Executive Committee, when the Association is not in session, shall be invested with all the powers of the Association needful to be exercised and not inconsistent with the Constitution and By-Laws of the Association.

#### ARTICLE X.

This Association shall meet annually at such time and place as the Executive Committee shall select, and those present at such meeting, not less than twenty-five, shall constitute a quorum. The Secretary shall give thirty days' notice of the time and place of the meeting.

**ARTICLE XI.**

Any member of this Association may be suspended or expelled for misconduct in his relation to this Association or in his profession, on conviction thereof in such manner as may be provided by the By-Laws.

**ARTICLE XII.**

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made except upon the concurrent vote of at least thirty members.

**ARTICLE XIII.**

At the regular meetings of this Association the accredited representatives of the respective local bar associations upon the basis of one delegate from each association, and one additional delegate for each ten members above the five necessary to organize, shall be entitled to all the privileges of regular members during such meetings except that they shall be denied the right to vote unless they are members of this Association. (Adopted June 4, 1909. See Report 1909, p. 45.)

**ARTICLE XIV.**

There shall be published in the annual report of the proceedings of this Association a list of all local associations in this State which may be affiliated with this Association, showing the name, location, officers and number of members of such associations and the delegates selected to represent such local associations at the annual meeting of this Association, with such other facts regarding said association as the Executive Committee may from time to time see fit to publish.. (Adopted June 4, 1909. See Report 1909, p. 45.)

**BY-LAWS.****ARTICLE I.**

The President shall preside at all meetings of the Association, and shall deliver an annual address. (Amended 1921. See this Report p. 38.)

The President shall be a member of the General Council of the American Bar Association, provided he be a member of the American Bar Association. (Adopted May 31st, 1917. See Report 1917, pp. 15, 16, 46, 47.)

In case of his absence, one of the Vice-Presidents shall preside.

It shall be the duty of the Vice-Presidents to promote in whatever way possible the interests of the Association by the members of the bar in their respective districts, and they shall assist particularly the Executive Committee and the Membership Committee of the Association, whenever called upon by them so to do. (Adopted June 7th, 1918. See Report 1918, pp. 12-14.)

## ARTICLE II.

The Secretary shall keep a record of all meetings of the Association, and of all matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association. He shall notify the officers and members of their election, shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be three hundred dollars (\$300.00) *per annum*.

The Secretary shall be a member *ex officio* of the Local Council for Georgia of the American Bar Association, provided he be a member of the American Bar Association. (Adopted May 31st, 1917. See Report 1917, pp. 15, 16, 46, 47.)

## ARTICLE III.

The Treasurer shall collect, and under the direction of the Executive Committee, disburse all funds of the Association. He shall report annually, and oftener if required. He shall keep regular accounts, which shall at all times be open to the inspection of members of the Association. His accounts shall be audited by the Executive Committee. He shall execute a bond with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of two thousand dollars (\$2,000.00) for the

use of the Association, and conditioned that he will well and faithfully perform the duties of the office. The cost of this bond shall be paid by the Association. The Treasurer's salary shall be one hundred and fifty dollars (\$150.00) *per annum*.

#### ARTICLE IV.

The Executive Committee shall meet upon the call of the Chairman. They shall arrange the program for the annual meetings and make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, and shall report at the annual meeting of the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same.

#### ARTICLE V.

At each annual, stated or adjourned meeting of the Association the order of business shall be prescribed by the Executive Committee, except as provided in these By-Laws. This order of business may be changed by the vote of a majority of the members present.

#### ARTICLE VI.

All applications for membership in the Association shall be in writing, signed by the applicant, and addressed to the Executive Committee. The application shall be endorsed by a member of the Association, and shall be accompanied by the first year's dues.

#### ARTICLE VII.

In pursuance of Article VII of the Constitution, there shall be the following standing committees:

1. A Committee on Legislation, consisting of three members, to be appointed by the President during the session of the Association. This committee shall prepare for legislative

action such matters requiring legislation as may have received the approval of the Association. It shall further be the duty of this committee to make due presentation of such proposed legislation to the appropriate legislative committee or bodies.

2. A Committee on Jurisprudence, Law Reform, and Procedure, who shall be charged with the duty of reporting such amendments of the law as in their opinion should be adopted and of scrutinizing all proposed changes in the law, and when necessary reporting upon the same. It shall also be the duty of this committee to observe the practical working of the judicial system of this State and recommend such changes therein as observation or experience may suggest.

3. A Committee on Federal Legislation, who shall be charged with the duty of reporting upon such Federal Legislation proposed or enacted as may be of interest to the legal profession, and especially such as affects the Federal judicial system, procedure and practice in the Federal Courts.

4. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest.

5. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes are expedient in the system and mode of legal education, and of admission to the practice of the profession in the State of Georgia.

6. A Committee on Legal Ethics and Grievances, who shall be charged with the duty of considering and reporting upon matters relating to the ethics of the profession, and of taking such action as the Association may direct, in case of departure from these principles by any member of the Georgia Bar, and of hearing all complaints which may be made in matters affecting the interest of the legal profession or the professional conduct of any member of the Georgia Bar, or the administration of justice, and reporting the same to the Asso-

ciation, with such recommendations as they may deem advisable. Said Committee shall, on behalf of the Association, institute and carry on such proceedings against such offenders and to such extent as the Association may order the cost of such proceedings to be paid by the Executive Committee out of the funds of the Association. (Amended June 2, 1917.)

7. A Committee on Membership, who shall take such action as may be best in their judgment to increase the membership of the Association.

8. A Committee on Memorials, who shall prepare and furnish to the Secretary brief, appropriate notices of members who have died during the year preceding each annual meeting, such notices not to exceed one page of printed matter and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of some deceased member of the bench or bar of Georgia, having special reference to his professional career, and have the same presented at the annual meeting.

9. A Committee on Reception, who shall be charged with the duty at all meetings of the Association of promoting social intercourse and fraternity among the members.

#### ARTICLE VIII.

Each of the standing committees, except the Committee on Legislation, shall consist of five members, and shall be appointed annually, except the Committee on Legal Ethics and Grievances, which shall be appointed quinquennially by the President of the Association, and a list thereof and of all special committees shall be transmitted by the President to the Secretary within thirty days from the adjournment of each annual meeting. The Secretary shall within thirty days after receipt thereof from the President, notify each committeeman of his appointment, giving a full list of his committee. (As amended May 30, 1919. See Report 1918, pp. 19-21, 26, 27 and Report 1919, pp. 24, 144.)

## ARTICLE IX.

The Standing Committee on Jurisprudence, Law Reform, and Procedure, shall furnish the Secretary, at least thirty days before each annual meeting, with a draft of their report, which is to be submitted at the meeting. The Secretary shall on receipt of said report, have the same printed and distributed to the members of the Association at least ten days before the date fixed for the annual meeting.

## ARTICLE X. ✓

No complaint of misconduct against any member of this Association or against any member of the bar shall be entertained by the Committee on Legal Ethics and Grievances unless presented in writing, subscribed by the person or persons complaining, plainly stating the matter complained of with particulars of time, place and circumstances. The Committee may authorize its chairman, should he consider the matter as presented not of sufficient gravity or apparent verity to call for consideration by the entire Committee, to institute preliminary investigation, and if upon such investigation the complaint seems without merit it need not then be submitted to the Committee. But upon the request of any member of the Committee, the Chairman shall submit to the Committee all facts coming to him in connection with such complaint and shall in any event submit to the entire Committee at each annual meeting of the Association a complete report of his acts in connection with each complaint not submitted to the Committee. The Committee shall be authorized to appoint a local or sub-committee from the vicinity of the residence of any member of the bar against whom complaint is made, said local or sub-committee being composed of lawyers of good repute, regardless of whether they are members of this Association or not, who shall investigate the facts, confer with the respondent, and report to the Chairman.

When any complaint is submitted to the Committee, if the matters therein mentioned are deemed of sufficient importance and the complaint is against a member of the Association. a



copy of the complaint together with a notice of not less than ten days of the time and place when the Committee will meet for the consideration thereof shall be served on the member complained of, either personally or by leaving the same at his office during office hours properly addressed to him.

If after hearing his explanation the Committee shall deem it proper that there be a trial of the charge, they shall cause similar notice of ten days of the time and place of trial to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as nearly as may be to the provisions of Sections 4969 to 4973, inclusive, of the Civil Code of Georgia of 1910. Should the Committee conclude that it is its duty to institute prosecution against the party complained of, such prosecution shall be instituted by it and all expenses incurred shall be borne by the Association.

If the Committee is of the opinion that such member should be dismissed from the Association or other disciplinary action taken, it shall report the same to the Association with its recommendation, giving to the defendant notice in writing of the intended report at least twenty days before the next meeting of the Association. Such defendant shall have the right to demand a hearing by the Association, provided that he shall within five days after the receipt of the notice of such report, furnish to the Chairman of the Grievance Committee a copy in writing of what will be his demand upon the Association.

If the complaint be against a lawyer not a member of the Association, the Committee may make such investigation as it deems proper, and may invite the party complained of to appear before it, though this is not mandatory. Said Committee shall have full authority to institute prosecution against the party complained of and all expenses of such prosecution shall be paid by the Association. (Adopted May 30, 1919. See Report 1918, pp. 19-21, 26, 27, and Report 1919 pp. 24, 144.)

#### ARTICLE XI.

The Treasurer is authorized to pay the actual expenses of

the members of the Executive and other standing committees of the Association in attending meetings called by the chairmen of the respective committees upon the rendition to the Treasurer of an itemized account of such expenses, approved by the chairman.

#### ARTICLE XII.

A part of the order of business of the first day of the annual meeting of the Association shall be the election of a committee on Nominations, consisting of five members, who shall be charged with the duty of reporting to the Association during the second day's session thereof, nominations for the officers of the Association, and members of the Executive Committee, to be selected at that meeting, but nothing herein provided shall prevent nominations of candidates to fill the respective offices, to be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name.

All elections, whether to office or to membership, shall be by ballot, and a majority of the votes cast shall be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

#### ARTICLE XIII.

The dues of the Association shall be payable on or before the first day of May for each year, and any member failing to pay his dues shall be in default, and if such default continues for three years, the name of such member shall be stricken from the roll of membership. Applications for reinstatement may be made and granted on such terms as may be deemed best by the Executive Committee.

The Treasurer shall on the 15th day of April of each year, inform each member of the Association that on the first day of May next, the Treasurer will draw at sight on said member for the amount due by him to the Association, and on the first day of May following, the Treasurer shall so draw for such dues upon each and every member of the Association who may at that time be indebted to the Association.

## ARTICLE XIV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

## ARTICLE XV.

Whenever an active member of the Association shall, by reason of his election or appointment, become an honorary member *ex officio*, as provided by the Constitution, the Secretary shall transfer the name of such member from the roll of active members to the roll of honorary members, and shall re-transfer the name to the active roll when such member shall no longer be entitled to honorary membership.

## ARTICLE XVI.

If the Executive Committee shall determine that it is necessary for the Association to hold any meeting other than the annual meeting, during the year, the same shall be held at such time and place as the Executive Committee may fix, notice of which shall be given by the Secretary.

## ARTICLE XVII.

All addresses, reports and other papers read at any meeting of the Association shall be transmitted to the Secretary within thirty days from the adjournment of such meeting, and if not so furnished, the Executive Committee will proceed to publish the proceedings without such papers.

## ARTICLE XVIII.

No resolution complimentary to any paper or address or to any member or officer shall be entertained.

## ARTICLE XIX.

Whenever any member of this Association shall have been disbarred by the final judgment of a court, he shall *ipso facto*

cease to be a member of this Association, and the Secretary shall notify him that his name has been dropped from the roll. (Adopted May 30, 1912. See Report of 1912, pp. 9-13.)

### RESOLUTIONS ADOPTED JULY 2, 1905.

WHEREAS, It is desirable to have as large attendance as practicable of the lawyers of the State upon the annual sessions of this Association; and,

WHEREAS, many members of the bar of the State are prevented from attending the annual convention by reason of the fact that many of the courts of the State are in session at the time of the meeting of the Bar Association; therefore, be it

*Resolved, first,* That the judges of the several courts of this State be, and they are hereby respectfully requested to so arrange their calendars and terms of court as that the members of the bar of the several courts of the State may have an opportunity to attend the annual sessions of this Association.

*Resolved, second,* That as soon as the Executive Committee of this Association decides upon the time and place of meeting of this Association, each year, the Secretary of this Association shall as early as practicable thereafter notify each of the judges of the several courts of the State of the time and place of meeting of the Association, and respectfully urge a compliance with the above request.

OFFICERS AND COMMITTEES  
OF  
THE GEORGIA BAR ASSOCIATION  
FOR 1922-1923

*President*

Z. D. HARRISON, Atlanta.

*First Vice-President*

WM. M. HOWARD, Augusta.

*Vice-Presidents for Congressional Districts*

First—A. B. LOVETT.....	Savannah
Second—J. H. TIPTON.....	Sylvester
Third—WARREN B. PARKS.....	Dawson
Fourth—W. G. LOVE.....	Columbus
Fifth—CHAS. B. SHELTON.....	Atlanta
Sixth—CHAS. AKERMAN.....	Macon
Seventh—GEO. A. H. HARRIS.....	Rome
Eighth—MILES W. LEWIS.....	Greensboro
Ninth—N. L. HUTCHINS.....	Lawrenceville
Tenth—WM. M. HOWARD.....	Augusta
Eleventh—MILLARD REESE.....	Brunswick
Twelfth—A. S. BRADLEY.....	Swainsboro

*Treasurer*

LOGAN BLECKLEY, Atlanta

*Secretary*

HARRY S. STROZIER, Macon

EXECUTIVE COMMITTEE

Hal Lawson, Chairman.....	Abbeville
G. C. Grogan.....	Elberton
H. H. Swift.....	Columbus
B. W. Fortson.....	Arlington
The President, the Secretary and the Treasurer, <i>ex-officio</i> .	

## STANDING COMMITTEES

## LEGISLATION

Warren B. Parks, Chairman.....	Dawson
A. A. Lawrence.....	Savannah
J. R. Pottle.....	Albany

## JURISPRUDENCE, LAW REFORM AND PROCEDURE

E. K. Wilcox, Chairman.....	Valdosta
David S. Atkinson.....	Savannah
H. C. Peebles.....	Atlanta
Jno. D. Pope.....	Albany
C. C. Bunn, Jr.....	Cedartown

## FEDERAL LEGISLATION

W. Carroll Latimer, Chairman.....	Atlanta
Chas. L. Bartlett.....	Macon
Wm. W. Gordon.....	Savannah
Barry Wright.....	Rome
L. C. Slade.....	Columbus

## INTERSTATE LAW

Millard Reese, Chairman.....	Brunswick
Geo. S. Jones.....	Macon
T. S. Hawes.....	Bainbridge
W. H. Burwell.....	Sparta
John T. Norris.....	Cartersville

## LEGAL EDUCATION AND ADMISSION TO THE BAR

Orville A. Park, Chairman.....	Macon
Sylvanus Morris .....	Athens
Elliott E. Cheatham.....	Atlanta
Hooper Alexander.....	Atlanta
Henry R. Goetchius.....	Columbus

## MEMBERSHIP

John B. Gamble, Chairman.....	Athens
Philip H. Alston.....	Atlanta
Erwin Sibley.....	Milledgeville
Stanley S. Bennet.....	Quitman
Carroll D. Colley.....	Washington

## RECEPTION

A. R. Lawton, Jr., Chairman.....	Savannah
Jas. M. Hull, Jr.....	Augusta
Chas. H. Hall.....	Macon

## MEMORIALS

A. P. Persons, Chairman.....	Talbotton
F. M. Oliver.....	Savannah
H. A. Wilkinson.....	Dawson
E. M. Mitchell.....	Atlanta
T. E. Ryals.....	Macon

## LEGAL ETHICS AND GRIEVANCES (5-Year Committee)

A. R. Lawton, Chairman*.....	Savannah
J. R. Pottle.....	Milledgeville
Lamar Rucker.....	Athens
Erwin Sibley.....	Milledgeville
Bryan Cumming*.....	Augusta

## DELEGATES TO THE AMERICAN BAR ASSOCIATION

R. C. Alston.....	Atlanta
Harry S. Strozier.....	Macon
Rollin H. Kimball.....	Winder

DELEGATES TO THE CONFERENCE OF REPRESENTATIVES  
FROM STATE AND LOCAL BAR ASSOCIATIONS.

T. A. Hammond.....	Atlanta
Orville A. Park.....	Macon
R. M. Hitch.....	Savannah

PERMANENT COMMISSION ON THE REVISION OF THE  
JUDICIAL SYSTEM AND PROCEDURE IN THE COURTS

Andrew J. Cobb, Chairman.....	Athens
Orville A. Park.....	Macon
J. H. Merrill.....	Thomasville

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\*Mr. W. H. Barrett resigned as Chairman upon his appointment as judge. Mr. Lawton was then made Chairman and Mr. Cumming was appointed to fill the vacancy on the Committee.

P. W. Meldrim.....	Savannah
W. K. Miller .....	Augusta
A. G. Powell.....	Atlanta
T. S. Felder.....	Macon
Samuel H. Sibley.....	Marietta
Wright Willingham.....	Rome
Alex. W. Smith.....	Atlanta

## SPECIAL COMMITTEES

COMMITTEE ON MEMORIAL TO ALEXANDER H. STEPHENS  
IN HALL OF FAME

A. L. Henson, Chairman.....	Calhoun
Carroll D. Colley.....	Washington
F. T. Saussy.....	Savannah
Thomas H. Shanks.....	Columbus
A. L. Franklin.....	Augusta

## COMMITTEE ON PROCEDURE IN APPELLATE COURTS

W. Carroll Latimer, Chairman.....	Atlanta
S. S. Bennet.....	Albany
H. H. Swift.....	Columbus



OFFICERS  
OF  
THE AMERICAN BAR ASSOCIATION  
1922-1923

*President*

JOHN W. DAVIS, 15 Broad St., New York, N. Y.

*Treasurer*

FREDERICK E. WADHAMS, 78 Chapel St., Albany, N. Y.

*Secretary*

W. THOMAS KEMP, 901 Maryland Trust Bldg.,  
Baltimore, Md.

*Vice-President for Georgia*

JOHN A. SIBLEY, Atlanta,

*Member of General Council for Georgia*

S. PRICE GILBERT, Atlanta.

*Local Council for Georgia*

F. M. OLIVER, Savannah.

ALEX. W. STEPHENS, Atlanta.

ARTHUR G. POWELL, Atlanta.

HARRY S. STROZIER, Macon.

## MEMBERS OF GEORGIA BAR ASSOCIATION WHO ARE MEMBERS OF AMERICAN BAR ASSOCIATION

Adams, Samuel B., Savannah  
 Alston, R. C. Atlanta  
 Arnold, Reuben R., Atlanta  
 Barrett, Wm. H., Augusta  
 Bartlett, Chas. L., Macon  
 Bell, H. G. Bainbridge  
 Bell, R. C., Cairo  
 Bennet, John W., Waycross  
 Bennet, Jos. W., Brunswick  
 Bennett, Sam S., Albany  
 Black, Eugene R., Atlanta  
 Bouhan, John J., Savannah  
 Blair, D. W., Marietta  
 Bradwell, J. D., Athens  
 Branch, Lee W., Quitman  
 Brandon, Morris, Atlanta  
 Bryan, Shepard, Atlanta  
 Burch, J. E., Dublin  
 Butts, Eustace C., Brunswick  
 Camp, R. Earl, Dublin  
 Candler, Asa W., Atlanta  
 Candler, Jno. S., Atlanta  
 Cann, J. Ferris, Savannah  
 Chalmers, Franklin S., Atlanta  
 Chastain, Edward S., Atlanta  
 Clay, William Law, Savannah  
 Cobb, Andrew J., Athens  
 Colquitt, W. T., Atlanta  
 Conyers, C. B., Brunswick  
 Cornett, W. G., Athens  
 Crovatt, A. J., Brunswick  
 Crum, D. A. R., Cordele  
 Cunningham, T. M., Jr., Savannah  
 Custer, P. V., Bainbridge  
 Dekle, Lebbeus, Thomasville  
 Dykes, W. W., Americus  
 Ellis, G. R., Americus  
 Fish, William H., Atlanta  
 Flynt, Roger D., Dublin  
 Fortson, Blanton, Athens  
 Fortson, B. W., Arlington  
 Fulwood, C. W., Tifton

Gamble, Jno. B., Athens  
 Gazan, Jacob, Savannah  
 Gignilliatt, Wm. R., Savannah  
 Gilbert, S. Price, Atlanta  
 Goetchius, Henry R., Columbus  
 Gordon, William W., Savannah  
 Grice, Warren, Macon  
 Guerry, J. B., Montezuma  
 Hall, C. H., Macon  
 Hammond, Theodore A., Atlanta  
 Hargrett, Haines H., Tifton  
 Harris, John B., Macon  
 Harrie, Walter A., Macon  
 Hawes, T. S., Bainbridge  
 Heyman, Arthur, Atlanta  
 Heyward, Geo. C., Savannah  
 Higdon, T. B., Atlanta  
 Hirsch, Harold, Atlanta  
 Hitch, R. M., Savannah  
 Hofmayer, I. J., Albany  
 Hopkins, Stiles, Atlanta  
 Howard Wm. M., Augusta  
 Howell, Albert, Atlanta  
 Hull, James M., Jr., Augusta  
 Hynds, John A., Atlanta  
 Irvin, I. T., Jr., Washington  
 Johns, G. A., Winder  
 Johnson, Henry Wiley, Savannah  
 Johnson, Paul E., Atlanta  
 Jones, George S., Macon  
 Jones, Harrison, Atlanta  
 Jones, Malcolm D., Macon  
 Jones, Robert P., Atlanta  
 Jones, W. P., Atlanta  
 King, Alexander C., Atlanta  
 Kontz, Ernest C., Atlanta  
 Latimer, W. Carroll, Atlanta  
 Lawrence, Alexander A., Savannah  
 Lawson, Hal, Abbeville  
 Lawson, Harley F., Hawkinsville  
 Lawton, Alexander R., Savannah  
 Lawton, A. R., Jr., Savannah

- Lovett, A. B., Savannah  
 Lumpkin, E. K., Athens  
 Luke, Roscoe, Atlanta  
 MacIntyre, Wm. I., Thomasville  
 Mackall, Wm. W., Savannah  
 Maddox, George E., Rome  
 Mayer, Albert E., Atlanta  
 McDaniel, Sanders, Atlanta  
 McDuffie, P. C., Atlanta  
 McWhorter, Hamilton, Athens  
 Meldrim, Peter W., Savannah  
 Merrill, Jos. Hansell, Thomasville  
 Miller, A. L., Macon  
 Miller, Wallace, Macon  
 Moon, E. T., LaGrange  
 Morris, Sylvanus, Athens  
 Oliver, Frank M., Savannah  
 O'Byrne, M. A., Savannah  
 O'Neal, M. E., Bainbridge  
 Orme, A. J., Atlanta  
 Owens, Geo. W., Savannah  
 Palmer, H. E. W., Atlanta  
 Park, Orville A., Macon  
 Parker, D. M., Waycross  
 Parker, R. S., Atlanta  
 Payton, Claude, Sylvester  
 Peeples, Henry C., Atlanta  
 Phillips, B. Z., Atlanta  
 Phillips, J. R., Louisville  
 Phillips, W. L., Louisville  
 Pope, Jeff A., Cairo  
 Pope, John D., Albany  
 Porter, J. H., Atlanta  
 Pottle, J. R., Albany  
 Powell, Arthur Gray, Atlanta  
 Randolph, Hollins N., Atlanta  
 Reed, Harry D., Waycross  
 Reese, Millard Brunswick  
 Rivers, E. D., Milltown  
 Rogers, Z. B., Elberton  
 Rosser, Luther Z., Atlanta  
 Rourke, John, Jr., Savannah  
 Russell, R. B., Winder  
 Seabrook, Paul E., Savannah  
 Shattuck, Norman, LaFayette  
 Sibley, John. A., Atlanta  
 Slade, L. C., Columbus  
 Sibley, S. H., Union Point  
 Slaton, John M., Atlanta  
 Smith, Alexander W., Sr., Atlanta  
 Smith, John R. L., Macon  
 Smith, Marion, Atlanta  
 Smith, Victor Lamar, Atlanta  
 Spalding, Hughes, Atlanta  
 Stephens, William B., Savannah  
 Stevens, Alex. W., Atlanta  
 Stevenson, W. A., Commerce  
 Strickland, John J., Athens  
 Stroz'er, Harry S., Macou  
 Swift, H. H., Columbus  
 Thompson, A. H., LaGrange  
 Thomson, W. D., Atlanta  
 Twitty, F. E., Brunswick  
 Tye, Benjamin W., Atlanta  
 Tye, John L., Atlanta  
 Tyson, Charles M., Darien  
 Underwood, E. Marvin, Atlanta  
 Watkins, Edgar, Atlanta  
 Webb, G. C., Americus  
 Wilkinson, H. A., Dawson  
 Willingham, Wright, Rome  
 Wright, Barry, Rome  
 Yeomans, M. J., Dawson

## LOCAL BAR ASSOCIATIONS IN GEORGIA

<i>President</i>		<i>Secretary</i>
John D. Pope	Albany Bar Association	R. H. Ferrell
E. A. Nisbet	Americus Bar Association	Hollis Fort
John B. Gamble	Athens Bar Association	O. J. Tolnas
Arthur G. Powell	Atlanta Bar Association	Robert Parker
J. C. C. Black	Augusta Bar Association	Jas. E. Harper
Jos. W. Bennet	Brunswick Bar Association	Eustace C. Butts
J. L. Willis	Columbus Bar Association	Paul Blanchard
E. F. Strozier	Crisp County Bar Association	J. Gordon Jones
R. G. Hartsfield	Decatur County Bar Association	E. A. Wimberly
Ira A. Chappel	Dublin Bar Association	J. B. Green
Jos. P. Brown	Greene County Bar Association	Wm. H. Fisher
Roland Ellis	Macon Bar Association	McKibben Lane
Robt. L. Shipp	Moultrie Bar Association.	T. H. Parker
Jas. M. Rogers	Savannah Bar Association	Jno. G. Kennedy
J. Hansell Merrill	Thomas County Bar Association	J. E. Craigmiles
J. L. Sweat	Waycross Bar Association	Harry D. Reed

## ROLL OF GEORGIA BAR ASSOCIATION

1922-1923

### HONORARY LIFE MEMBERS

Hon. David C. Barrow, Chancellor of the University of Georgia.....	Athens
Mrs. Joseph R. Lamar.....	Atlanta
Hon. Z. D. Harrison.....	Atlanta

### HONORARY MEMBERS

Hon. T. W. Hardwick, Governor of Georgia.....	Atlanta
Hon. George M. Napier, Attorney-General.....	Atlanta

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### JUSTICES OF THE SUPREME COURT

Hon. Richard B. Russell, Chief Justice.....	Atlanta
Hon. Marcus W. Beck, Presiding Justice.....	Atlanta
Hon. Samuel C. Atkinson, Associate Justice.....	Atlanta
Hon. Hiram Warner Hill, Associate Justice.....	Atlanta
Hon. Price Gilbert, Associate Justice.....	Atlanta
Hon. James K. Hines, Associate Justice.....	Atlanta

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### JUDGES OF THE COURT OF APPEALS

Hon. Nash R. Broyles, Chief Judge.....	Atlanta
Hon. W. F. Jenkins, Presiding Judge.....	Atlanta
Hon. Roscoe Luke, Judge.....	Atlanta
Hon. O. H. B. Bloodworth, Judge.....	Atlanta
Hon. Alex. W. Stephens, Judge.....	Atlanta
Hon. R. C. Bell, Judge .....	Atlanta

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Hon. Logan Bleckley, Clerk Court of Appeals....	Atlanta
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### UNITED STATES JUDGES RESIDENT IN GEORGIA

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Hon. Samuel H. Sibley, Judge Northern District..	Marietta
Hon. Alex. C. King, Circuit Court Judge.....	Atlanta
Hon. Wm. H. Barrett, Judge Southern District..	Augusta

## JUDGES OF THE SUPERIOR COURTS

CIRCUIT	JUDGE	RESIDENCE
Alapaha.....	Hon. R. G. Dickson.....	Homerville
Albany.....	Hon. W. V. Custer.....	Bainbridge
Atlanta.....	Hon. W. D. Ellis.....	Atlanta
Atlanta.....	Hon. Geo. L. Bell.....	Atlanta
Atlanta.....	Hon. John D. Humphries....	Atlanta
Atlanta.....	Hon. E. D. Thomas.....	Atlanta
Atlantic.....	Hon. Walter W. Sheppard..	Savannah
Augusta.....	Hon. A. L. Franklin.....	Augusta
Blue Ridge.....	Hon. D. W. Blair.....	Marietta
Brunswick.....	Hon. J. P. Highsmith.....	Baxley
Chattahoochee....	Hon. Geo. P. Munro.....	Columbus
Cherokee.....	Hon. M. C. Tarver.....	Dalton
Cordele.....	Hon. O. T. Gower.....	Cordele
Coweta.....	Hon. C. E. Roop.....	Carrollton
Dublin.....	Hon. J. L. Kent.....	Wrightsville
Eastern.....	Hon. Peter W. Meldrim....	Savannah
Flint.....	Hon. W. E. H. Searcy, Jr....	Griffin
Macon.....	Hon. H. A. Mathews....	Fort Valley
Macon.....	Hon. Malcolm D. Jones.....	Macon
Middle.....	Hon. R. N. Hardeman.....	Louisville
Northeastern....	Hon. J. B. Jones.....	Gainesville
Northern.....	Hon. Walter L. Hodges....	Hartwell
Ocmulgee.....	Hon. James B. Park.....	Greensboro
Oconee.....	Hon. Eschol Graham.....	McRae
Ogeechee.....	Hon. Henry B. Strange....	Statesboro
Pataula.....	Hon. William C. Worrill....	Cuthbert
Rome.....	Hon. Moses Wright.....	Rome
Southern.....	Hon. William E. Thomas....	Valdosta
Southwestern....	Hon. Zera A. Littlejohn....	Americus
Stone Mountain...	Hon. John B. Hutcheson....	Jonesboro
Tallapoosa.....	Hon. Frank A. Irwin.....	Cedartown
Tifton.....	Hon. R. Eve.....	Tifton
Toombs.....	Hon. E. T. Shurley.....	Warrenton
Waycross.....	Hon. J. I. Summerall.....	Waycross
Western.....	Hon. Blanton Fortson.....	Athens

## JUDGES OF THE CITY COURTS

COURT.	JUDGE.	RESIDENCE.
Albany.....	Hon. Clayton Jones.....	Albany
Alma.....	Hon. Andrew J. Tuten.....	Alma
Americus.....	Hon. W. M. Harper.....	Americus
Ashburn.....	Hon. R. L. Tipton.....	Ashburn
Athens.....	Hon. J. D. Bradwell.....	Athens
Atlanta.....	Hon. H. M. Reid.....	Atlanta
Atlanta.....	Hon. Andrew E. Calhoun.....	Atlanta
Bainbridge.....	Hon. H. B. Spooner.....	Bainbridge
Barnesville.....	Hon. J. F. Redding.....	Barnesville
Baxley.....	Hon. H. J. Lawrence.....	Baxley
Blackshear.....	Hon. R. G. Mitchell, Jr.....	Blackshear
Blakely.....	Hon. A. H. Gray.....	Blakely
Brunswick.....	Hon. Eustace C. Butts.....	Brunswick
Cairo.....	Hon. L. W. Rigsby.....	Cairo
Camilla.....	Hon. Ben. T. Burson.....	Camilla
Carrollton.....	Hon. Leon Hood.....	Carrollton
Cartersville.....	Hon. Wm. T. Townsend....	Cartersville
Claxton.....	Hon. E. C. Elmore.....	Claxton
Cleveland.....	Hon. J. W. H. Underwood..	Cleveland
Columbus.....	Hon. G. Y. Tigner.....	Columbus
Crawfordville....	Hon. Hawes Cloud....	Crawfordville
Dawson.....	Hon. M. C. Edwards.....	Dawson
Decatur.....	Hon. Walter R. Daley.....	Atlanta
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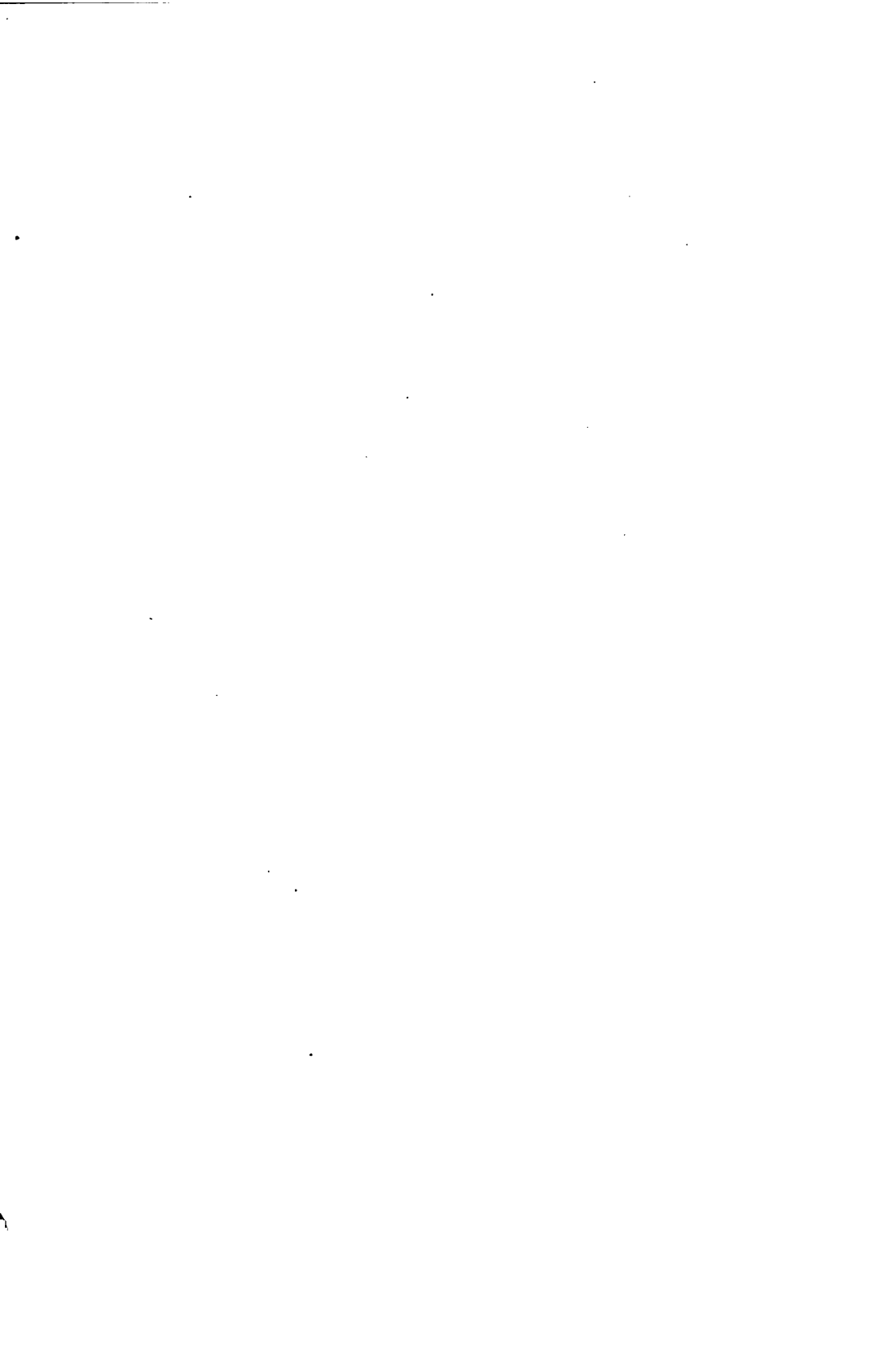
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